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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1965

Nos. 69 and 71

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD  
OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHER-  
HOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CON-  
DUCTORS AND BRAKEMEN, and SWITCHMEN'S UNION OF  
NORTH AMERICA, *Appellants*,

v.

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY, MIS-  
SOURI PACIFIC RAILROAD COMPANY, ST. LOUIS-SAN FRAN-  
CISCO RAILWAY COMPANY, ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY, and THE TEXAS AND PACIFIC RAIL-  
WAY COMPANY, *Appellees*.

ROBERT N. HARDIN, Prosecuting Attorney for the Seventh Judicial  
Circuit of Arkansas, and JOHN W. GOODSON, Prosecuting Attorney  
for the Eighth Judicial Circuit of Arkansas, *Appellants*,

v.

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY, MIS-  
SOURI PACIFIC RAILROAD COMPANY, ST. LOUIS-SAN FRAN-  
CISCO RAILWAY COMPANY, ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY, and THE TEXAS AND PACIFIC RAIL-  
WAY COMPANY, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN  
DISTRICT OF ARKANSAS

**BRIEF FOR THE NATIONAL RAILWAY LABOR  
CONFERENCE AS AMICUS CURIAE**

**INTEREST OF THE AMICUS CURIAE**

The National Railway Labor Conference, the *amicus curiae* on whose behalf this brief is submitted, represents the great majority of American railroads. Its function is

to assist these member railroads in connection with labor relations problems and represent them in contract negotiations that are national in scope. When Public Law 88-108 (77 Stat. 132, 45 U.S.C. following § 157) was enacted, Conference members accounted for 92 percent of the total railroad mileage in the United States, employed 94 percent of the industry's employees, and owned 95 percent of the total net investment in railroad plant and equipment in this country.<sup>1</sup> Corresponding percentages today are somewhat greater. (A list of the member railroads appears in Appendix I hereto.)

The members of the Conference include nearly all of the carriers that are subject to Public Law 88-108 and the Award by Arbitration Board No. 282 rendered pursuant thereto. Through its Chairman, who has served as a carrier member of both the Presidential Railroad Commission and the Arbitration Board, the Conference has been the carriers' principal spokesman throughout the dispute that culminated in the Award by Arbitration Board No. 282.

The interest of the Conference in this case is two-fold. In the first place, since many of its members operate in states that have minimum crew laws<sup>2</sup> and since other states—and, indeed, municipalities—may at any time decide to enact such legislation, the Conference has an obvious and important stake in this Court's decision whether such laws are valid. This interest is particularly immediate for

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<sup>1</sup> 109 Cong. Rec. 15275; Hearings before the Senate Committee on Commerce on S.J.Res. 102, 88th Cong., 1st Sess., p. 106 (hereinafter referred to as Senate Hearings); Hearings before the House Committee on Interstate and Foreign Commerce on H.J.Res. 565, 88th Cong., 1st Sess., p. 200 (hereinafter referred to as House Hearings).

<sup>2</sup> In their brief, the labor organization appellants refer to these state laws as "full crew laws." (BLE Br. p. 8, n. 1.) Railroads frequently refer to the same laws (for good reason) as "excess crew laws." However, in this brief the less argumentative term "minimum crew laws" will be used.

the carrier members that are parties to pending suits involving minimum crew laws of several states other than Arkansas,<sup>3</sup> states which have themselves filed briefs *amicus curiae* in the case at bar. The minimum crew laws now on the books in seven states<sup>4</sup> require the carriers to maintain many jobs that Arbitration Board No. 282 has determined do not serve either the public interest in "adequate and safe transportation services" or any legitimate interest of the

<sup>3</sup> *Switchmen's Union v. Erie L.R. Co.*, Sup. Ct. Erie Cty., N.Y. (1965) (New York law held preempted by P.L. 88-108), *appeal pending*, Appellate Division; *New York Central R. Co. v. Lefkowitz*, 46 Misc. 2d 68, 250 N.Y.S. 2d 76 (Sup. Ct. Westchester Cty. N.Y. 1965) (New York law held not preempted), *appeal pending*, Appellate Division; *New York Central R. Co. v. Public Svc. Comm'n*, Super. Ct. Marion Cty., Ind. (1965) (enforcement of Indiana law enjoined), *appeal pending*, Indiana Supreme Court; *Chicago & N.W. R. Co. v. LaFollette*, 135 N.W. 2d 269, 277-278 (Wise. 1965) (Wisconsin law held not preempted; now pending in lower state courts on remand); *Chicago M. St. P. & Pac. R. Co. v. Pearson*, No. 6214 (E.D.Wash.) (Washington law; pending); *Akron, C. & Y. R. Co. v. Public U. Comm'n*, Ct. Com. Pleas, Franklin Cty., Ohio (Ohio law; pending). Also, the Texas minimum crew laws have recently been held to be preempted in a decision that is now final. *Texas v. Southern Pac. Co.*, 302 S.W. 2d 497 (Tex. Civ. App. 1965) (alternative holding), *writ of error refused* "no reversible error," Texas Supreme Court.

<sup>4</sup> General minimum crew laws currently are extant in seven states—Arkansas, Indiana, Massachusetts, New York, Ohio, Washington, and Wisconsin: Ark. Stat. Ann. §§ 73-720 through 722, 73-726 through 729 (1957); Ind. Stats. §§ 55-1327 through 1334 (1951); Mass. Ann. Laws c. 100, § 185 (1950); N.Y. Railroad Law §§ 54-a through 54-e (1952); Ohio Rev. Code §§ 4999.06-.07 (1954); Wash. Rev. Code §§ 81.40.010-.030; Wise. Stats. §§ 192.25-.26 (1957). Laws in Nevada and Texas have been held to be applicable only to steam-powered operations: *Southern Pac. Co. v. Dickerson*, 397 P.2d 187 (Nev. 1964) (Nev. Rev. Stats. § 705.390 (1963)); *Texas v. Southern Pac. Co.*, *supra* (Tex. Civ. Stats. Art. 6380 (1926)) (alternative holding). Minimum crew laws have been repealed entirely in Mississippi: Miss. Code §§ 7759-61 (1964 Supp.). The portions of minimum crew laws that apply to freight and switching operations have been repealed in Arizona, California, Nebraska, North Dakota, and Oregon: Ariz. Rev. Stat. § 40-853 (1965 Supp.); Cal. Labor Code §§ 6900.1-6903 (Dec. 1964 Supp.); 1965 CCH Adv. Sess. Laws Repr. (Nebraska) 715; N.D. Code §§ 49-13-09 through 49-13-13 (1965 Supp.); Ore. Sess. Laws c. 482, § 1 (1965 Supp.). Maine has a law that applies only to steam-powered passenger trains. Me. Rev. Stat. Ann. § 35-1161.

carriers' employees. Thus the substantial burden imposed on the members of the Conference by these laws hampers the carriers' efforts to realize fully the goal of the National Transportation Policy—"safe, adequate, economical, and efficient service and . . . sound economic conditions among the several carriers." (54 Stat. 899, 49 U.S.C. preceding §1.)

In addition, the carriers represented by the Conference, wherever they operate and whatever this Court's decision as to the validity of state minimum crew legislation, may be directly affected by any statements that the Court may make concerning the work rules that will govern the manning of trains upon expiration of the two-year period during which the Arbitration Award "shall continue in force." (P.L. 88-108, §4.) Certain arguments advanced by appellants appear to be based upon the erroneous premise that when the Award "expires" the work rules in effect prior to the Award will be revived, thereby requiring the carriers to hire thousands of men to fill positions eliminated under the Award. But, as we shall show, the work rules prescribed in the Award will continue to regulate the manning of trains after expiration of the two-year period until those rules are changed after collective bargaining conducted pursuant to Section 6 of the Railway Labor Act.

We have had the opportunity to examine carefully the brief of appellees and we agree with the arguments presented therein. We shall not repeat in detail the arguments so effectively advanced by appellees, although we think it worthwhile to supplement appellees' statement of the case in certain respects and to underscore certain elements of appellees' analysis that we consider particularly important. We do, however, treat more fully the question of the significance to be given the duration of the Award in states not having minimum crew laws. Although that ques-

tion is a collateral matter in this case and hence naturally not central to the arguments of the parties, the manner in which the Court treats the issue may be of paramount importance to the members of the *amicus* entirely apart from the outcome of this particular litigation.

### STATEMENT

The basic issue in this case is the correctness of the lower court's decision that two Arkansas minimum crew laws are invalid under the Supremacy Clause of the Constitution because they are superseded by Public Law 88-108 and the Award of Arbitration Board No. 282 thereunder. If the Congress and the Board acted upon a subject matter that is also the subject matter of the minimum crew laws, and if this federal action resulted in manning regulations in conflict with the minimum crew laws, those laws cannot stand.

While we believe that the character of the Congressional mandate to the Arbitration Board and the inconsistency of the Board's Award with the state laws is clearly disclosed by the terms of the statute and the Award, at the same time we cannot agree that "it seems pointless to supplement the countless reviews of the history of the dispute" (BLE Br. p. 14 n. 7). The statute and the Award did not represent a novel solution conceived by the members of the 88th Congress and the Board. Rather, the legislation and the Award bear the imprint of years of troubled negotiation by the parties and of thoughtful examination by distinguished public bodies. In consequence, the sketchy statements of fact supplied by the appellants simply will not serve. Rather, it is the statement set forth in the appellees' brief that brings into clear focus the purpose of the Congress in enacting Public Law 88-108. We believe it may be useful to the Court for us to add certain additional facts

with which the *amicus* is especially familiar because of its role as railroad negotiator.

The 1959 and 1960 notices that, in a formal manner, marked the beginning of the dispute that led to the enactment of Public Law 88-108 represented the culmination of years of controversy respecting the reduction of manpower made possible by modern technology. When the notices were served, the use of firemen was required on most diesel engines by rules stemming from the National Diesel Agreement of 1937 between many carriers and the BLF&E. Thus, engines were ordinarily manned by an engineer and a fireman, and in addition, in the case of road freight trains, by a head brakeman. However, the 1937 agreement had been signed at a time when few of the carriers involved had had much experience with the use of diesels—only 218 of 43,812 locomotives then in use were diesels—much less with such later devices as “deadman controls,” which halt the engine in the event of the disability of the engineer. Report of the Presidential Railroad Commission (1962), pp. 36, 38 (hereinafter cited “PRC Report”).

It soon became evident that, at least in road freight trains where there were three men in the cab and where the fireman no longer was occupied by stoking the boiler, it did not make much sense to have three men to perform the tasks that previously the head brakeman had shared with the engineer. And while on yard engines engaged in switching operations there were generally only two men in the cab, the carriers were of the view that the engineer alone could safely operate the engine because operations were conducted at low speed and were controlled by hand signals from men on the ground.

The situation as to the “consist” of train crews—i.e., the members of the crew other than the engineer and the

fireman—was somewhat different. When the 1959 and 1960 notices were served, the consist of train crews—putting aside minimum crew law states—was governed by a variety of local agreements, and sometimes was left entirely to managerial discretion. Many crews consisted of one conductor and two trainmen. But many others included fewer than two trainmen, while some crews included more. The carriers were convinced that here, too, in many circumstances existing agreements required more men than necessary to insure safe operation, especially in view of such developments as the introduction of Centra'sed Traffic Control, the increasingly widespread use of radio-telephone, improvements in braking and signal systems, and the modernization of classification yards.

The railroads' judgment has been vindicated by every public body that examined this problem in the context of the 1959 and 1960 notices. Apart from the Arbitration Board itself, the most important of these public bodies was the Presidential Railroad Commission appointed by the President in 1960 (Exec. Order 10891). That Commission, which was composed of a distinguished group headed by Judge Simon H. Rifkind, conducted an extensive hearing that produced a mass of evidence,<sup>5</sup> the bulk of it relating to the contentions of the brotherhoods respecting safety and workload. In its Report to the President, dated February 26, 1962, it stated that "an elaborate system of rules, practices, and decisions, developed over a period of more than 100 years, governs the manning of American railroad engines and trains [and] the assignment of railroad operating employees to their daily tasks" (p. 2). This "common law" of railroad labor relations, the Commission concluded, had

<sup>5</sup> The Commission heard 79 witnesses during 96 days of hearings, during which it compiled a transcript of 15,306 pages, received statements from an additional 155 witnesses, and accepted exhibits introduced by the parties aggregating another 20,319 pages. PRC Report, p. 16.

"not been sufficiently flexible to permit many changes in manning and assignments which are appropriate in the light of the technological and economic revolutions that have taken place" (p. 6). Consequently, it recommended generally that "the rules governing the manning of engines and trains and the assignment of employees be revised to permit the elimination of unnecessary jobs and at the same time to safeguard the interests of the individual employees adversely affected" (p. 7).

The "basic considerations" which governed the Commission in making specific recommendations were "that the Nation is entitled to a safe and efficient rail-transport system, that management should be accorded reasonable opportunity to install technological improvements, that employees are entitled to work . . . under conditions which promote efficiency, safety, and security, and that where improvements in technology leading to greater productivity adversely affect employees, adequate provision must be made for their welfare" (p. 9). In this connection, the Commission observed that "an efficient, safe, and modern railroad system in muscular trim for effective competition, will provide better employment opportunity than a system headed toward decline by its own obsolescence" (p. 11).

In this context, the Commission made recommendations as to the specific issues before it. With respect to the use of firemen, it observed that the basic dispute concerned the essentiality of the fireman's job "for the safe and efficient operation of diesels in road freight and yard operations" (p. 37). Accordingly, the Commission analyzed each of the fireman's basic tasks in terms of safety and efficiency. Of these tasks, the brotherhoods relied most heavily upon the maintenance of a "lookout" on the left-hand side of the cab (including the passing of signals to the engineer). The Commission unequivocally rejected the brotherhoods' con-

tentions, stating that "the fireman's lookout function . . . is not essential to the safe and efficient operation of road freight and yard diesels" (p. 40). On freight diesels, which were invariably manned by three persons, the lookout function could be performed by the head brakeman, who had shared it with the fireman in the past (pp. 38-40). And "on yard diesels, [the fireman's] function in passing signals is minimal. In view of the slower nature of yard operations, which proceed under signals from members of the ground crew, the precautions taken by other members of the crew should suffice for the safety of men and equipment. The only exception . . . is in those rare occasions when the yard engineer is disabled while the diesel is in motion" (p. 40). And those situations could be met by requiring use of dead-man controls (pp. 43-44).<sup>6</sup>

The Commission concluded, in light of these findings, that although it was not possible to say "that nowhere in the United States is there in operation a single run which requires the services of a [fireman] to render it safe and efficient," such situations would be so nearly "unique" that they should not be made the subject of a general rule requiring the use of firemen (pp. 45-46). Accordingly, the Commission recommended that the existing rules requiring the use of firemen be abrogated and that, subject to measures for the protection of men already employed—retention of firemen with more than ten years' service and substantial separation allowances to others—the carriers should be permitted in their discretion to discontinue firemen's assignments (pp. 48-50).

As to the consist of train crews, the parties' contentions once again revolved about "the matter of safety of opera-

<sup>6</sup> Similarly, the Commission found that mechanical duties performed by firemen "are relatively minor, and are not essential to safe operation" (p. 43), and that on road freight diesels in the event of disability of the engineer the head brakeman could "easily stop the train" (p. 43).

tions" (p. 56). The Commission determined that the existing rules, most of which had been developed more than 30 years ago and some of which went back to the 19th century (p. 55), had resulted in "some overmanning . . . but little undermanning" (p. 57). Accordingly, the Commission recommended that the carriers and the brotherhoods be allowed to propose changes in the consist of specific crews, and that if agreement could not be reached the disputes be arbitrated by special tribunals which should apply the basic criteria of "safety of operations" and appropriate workload (p. 59). The men already employed would be protected in various ways, as in the case of firemen (p. 60).

These findings and recommendations were, of course, at odds with state minimum crew legislation, as the Commission recognized. The Commission stated: "[M]ost of the legislation of this kind was enacted prior to 1920. These laws apparently fail to envision modern railroad operations. We feel that our recommendations with respect to this issue [consist of train crews] should have nationwide application." Just "how the restriction of those laws may be lifted," however, the Commission did not undertake to answer (p. 64).

While the carriers accepted the Commission's recommendations, the brotherhoods did not. Therefore, after Mediation Board efforts failed and the brotherhoods rejected the Board's proposal that the dispute be arbitrated, the President established, pursuant to Section 10 of the Railway Labor Act, an Emergency Board consisting of Judge Samuel I. Rosenman, Clark Kerr, and Nathan P. Feinsinger (Exec. Order 11101).

The Emergency Board's recommendations, in general, were the same as those of the Presidential Railroad Commission. In its report of May 13, 1963,<sup>7</sup> the Board stated

<sup>7</sup> The report is set out in full in the House Hearings, pp. 42-49.

that the basic issue was whether the brotherhoods were right in contending that their proposals respecting manning were essential for the protection of employees "against arbitrary, unsafe, and unreasonably onerous working conditions, and for necessary security and stability of employment. . . ." House Hearings, p. 43. With respect to the use of firemen, the Board noted that "[t]he carriers have always accepted the continued use of firemen on passenger diesel operations, where there are now only two men in the cab," but that, as to freight diesels, the carriers maintained that the "work performed by firemen. . . —left-hand lookout, the communication of signals to the engineer, and the detection and correction of locomotive malfunctions"—"can be combined with other work performed by employees in other classifications." The brotherhoods, moreover, did "not contend that there are no jobs presently occupied by firemen which cannot be abolished." Thus, the Board observed, "The basic problem . . . becomes one of establishing a procedure for ascertaining those situations, if any, which will continue to require the presence of a fireman in order to assure adequate safety, and to prevent placing an undue burden upon the remaining crew members." House Hearings, p. 45.

The Board's recommended solution was to permit the carriers to eliminate firemen's jobs, subject to a right of protest by the brotherhoods as to certain "key" categories. If a protest could not be resolved through negotiation, it would be settled by arbitration. For persons already employed, the Board recommended protective provisions that generally paralleled those of the Presidential Commission. House Hearings, pp. 45-46.

As to crew consist, the Board's recommendation was again basically the same as that of the Commission. That is, the parties should negotiate locally, pursuant to national

guidelines "based on considerations of safety and efficiency and of undue burden on other members of the crew," and failing agreement there should be arbitration. Persons already employed could not, however, be released except by attrition. House Hearings, p. 47.

Again, the carriers accepted the Board's proposals but the brotherhoods rejected them. The President then proposed arbitration by Mr. Justice Goldberg—accepted by the carriers, rejected by the brotherhoods. The President next requested a report from a special subcommittee of the President's Advisory Committee on Labor-Management Policy. That report, dated July 19, 1963, also recognized that a fair settlement of the manning disputes involved, in essence, the finding of a solution that would serve all the interests at stake—the nation's, the carriers', and the employees'—in "safe and efficient operations," with fair treatment of employees already in service. See H.R. Rep. No. 713, 88th Cong., 1st Sess., pp. 8-10; Senate Hearings, p. 17; House Hearings, pp. 14-15.

Three days later the President asked the Congress for legislation. His message called attention to the reports of the Presidential Commission, the Emergency Board, and the subcommittee of the Committee on Labor-Management Policy, and stated that his objective was to provide a solution for the parties' dispute which, among other things, "recognizes both the public interest in promoting railroad efficiency" and "the public's concern for those adversely affected by a settlement." Senate Hearings, p. 8; House Hearings, p. 9. He proposed that an "expert body should pass on these proposed rule changes in the light of public service and safety" and should make provision for the welfare of employees who might otherwise be adversely affected. That body should be "directed to use to ad-

vantage the work of the two previous panels which received evidence on these matters"—the Commission and the Emergency Board—and should "judge the effect of each proposed rule on the adequacy and safety of transportation service to the public and on the interests of both parties." Senate Hearings, p. 9; House Hearings, p. 9. He quoted the Commission's statement that "[a]n adequate program to realize the benefits of advancing technology in the public interest . . . must include both reasonable opportunity for management to achieve change, and for workers to enjoy reasonable protection against the harsh effects of too sudden change. Progress plus protection must be our choice. . . ." Senate Hearings, p. 10; House Hearings, p. 10. And he also cited the Emergency Board's view that there is a "necessity for progress in the railroad industry, for efficiency in order to meet the challenge of competing industries," but that a solution must "at the same time . . . preserve not only strong unions for the employees, but for the individual worker a continued life of usefulness to himself and his family, and to society itself." Senate Hearings, p. 11; House Hearings, p. 10. The President concluded the message by urging the "prompt enactment" of the legislation to "help launch a new national effort to meet the growing challenge of worker displacement by technological and economic change," an effort that would "above all . . . benefit the public interest, and that is our primary test." Senate Hearings, p. 13; House Hearings, p. 12.

This dominant note sounded by the President—that the task was to serve the public interest by solving the problem of automation in a way that would permit the railroads to provide efficient and safe service and at the same time protect employees from hardship—continued as the theme of the congressional hearings. Thus the committees ex-

plored the interests that had to be taken into account—the nation's and the parties' in "progress" plus protection,"<sup>9</sup> and safety of railroad operations.<sup>10</sup>

Finally, after last minute efforts by the Labor Department to settle the dispute failed, the Congress had to act in order to prevent a nationwide strike scheduled for August 29, 1963. The result was Public Law 88-108. While the statute differed from the President's bill in certain respects—e.g., an *ad hoc* board replaced the Interstate Commerce Commission for reasons set forth in the appellees' brief—there was no change in the basic purpose of the legislation. Thus, the years of dispute, investigation, and recommen-

<sup>9</sup> The need to eliminate assignments rendered obsolete by technological change in the railroad industry was explored in detail with witnesses for the Administration and the carriers. E.g., Senate Hearings, pp. 45, 65, 79-80, 92, 109, 111, 117, 121, 124, 126, 127, 128, 137-139, 227-228, 235-237, 242-244, 244-245, 252-255, 354-356, 360, 368-369, 373-374, 411; House Hearings, pp. 37-40, 182-185, 186-190, 204-206, 212-213, 217-218, 248-249, 250-257, 261-266, 306-313, 400-401, 408-410, 417-418, 427-428, 527-529, 542, 545-547, 574. Further indications of Congress' concern with the matter appear in the Senate debate. 109 Cong. Rec. 15048, 15049, 15050, 15051, 15057, 15122-23; 15276.

<sup>10</sup> The need to provide for the protection of employees already in service was also explored extensively with government and carrier witnesses. E.g., Senate Hearings, pp. 45, 46, 64, 70-71, 99, 107-108, 109, 110, 123, 366, 402-403, 405-406, 408-410; House Hearings, pp. 37-38, 39-40, 51-52, 57-58, 62-63, 66-67, 70-71, 74-76, 91-92, 101, 117-167, 172-173, 186, 206-207, 214, 216, 242, 243, 258-260, 415-417, 425-427, 534-535, 550, 574-575, 576, 582-583, 585, 586, 591-592, 612. This matter, too, received attention in the committee reports and was discussed during the subsequent debates. See H.R. Rep. No. 713, 88th Cong., 1st Sess., pp. 8, 9, 23-24, 25-26; S. Rep. No. 459, 88th Cong., 1st Sess., p. 4; 109 Cong. Rec. 15966-67; see also 109 Cong. Rec. 15903, 15133.

<sup>11</sup> The effect of any legislation on the safety of railroad operations was also the subject of much testimony during the hearings. E.g., Senate Hearings, pp. 72, 85-86, 98, 99, 100, 110, 118, 121, 122, 124, 125, 482-488, 491-498, 501, 504-505, 528, 530, 536, 630-634, 709-712; House Hearings pp. 50, 107-108, 110-111, 182-185, 213, 241-242, 250-257, 265, 421, 548, 618, 647, 706-723, 738-767, 803, 805, 815-816, 820, 996-999. Congress' concern with safety was indicated also in the House Report and during the debates. H.R. Rep. No. 713, 88th Cong., 1st Sess., pp. 8, 9, 21-22, 24-25; 109 Cong. Rec. 15903, 15962, 15127, 15128, 15141-42.

dations were distilled in Section 7(a), which directed the Board, in the language of Section 3 of the President's bill, to "give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected," as well as to the narrowing of the areas of disagreement accomplished in bargaining and mediation. The Board faithfully executed this mandate, as the courts have held in rejecting petitions by the brotherhoods to impeach the validity of the Board's Award. *Brotherhood of L. F. & E. v. Chicago, B & Q. R. Co.* 225 F. Supp. 11 (D.D.C. 1964), *aff'd*, 331 F. 2d 1020 (D.C. Cir. 1964), *cert. den.*, 377 U.S. 918 (1964).<sup>11</sup>

The conclusions reached by Arbitration Board No. 282 and the provisions of its Award have been fully described in appellees' brief, and need not be repeated here. We emphasize only that the Board generally agreed with the conclusions of the Presidential Commission and the Emergency Board concerning the reductions in the manning of trains made possible by technological advances without unduly affecting the safety of operations, and that the provisions of the Award generally correspond with the recommendations made by the Presidential Commission and the Emergency Board despite some differences in detail.

Thus, the Arbitration Board did, as its mandate required, give prime attention to the requirements of safety—the problem that, as we have indicated, so deeply engaged the attention of the public bodies that were the lineal ancestors of the Board. The proceedings before the Board were, in the language of its Neutral Members, "pervaded" with "concern with safety" (Op. Neut. Members, R. 116).

<sup>11</sup> The neutral members of the Board were Ralph T. Seward, Chairman, Benjamin Aaron and James J. Healy; the carrier members were J. E. Wolfe and Guy W. Knight; and the union members were H. E. Gilbert and R. H. McDonald.

It is this problem—the minimum manning requirements consonant with reasonable assurances of safety—that is also the sole purported justification for the state minimum crew laws. And the findings of the Arbitration Board respecting the minimum number of firemen that should be required as well as the findings of the special boards respecting the minimum crew consist—findings made with due regard to safety of operations—are squarely in conflict with the requirements of the state minimum crew laws enacted many years ago when conditions in the industry were very different from present-day conditions.

#### SUMMARY OF ARGUMENT

The fundamental problem of automation—securing the benefits of modern technology without producing wholesale dismissal of employees—is addressed in the railroad industry by Arbitration Award No. 282. The basic thrust of the Award is that employees who have devoted any substantial part of their careers to the railroads should not be required to look elsewhere for work, but that, as those employees leave, the railroads should not be required to fill positions that are no longer needed. State minimum crew laws foreclose the possibility of adjusting the manning of trains to modern technology in that eminently sensible manner. The result is unsound as a matter of policy and improper as a matter of law.

I. 1. The subject matter of the Arkansas laws and the awards rendered pursuant to Public Law 88-108 is the same: the number of men to be assigned to the crews of trains. There is no exception in either the federal statute or the awards for states that have minimum crew laws.

2. The federal awards and the Arkansas laws are in conflict, and therefore the Arkansas laws cannot stand. The federal awards authorize the elimination of 90% of fire-

men's assignments and the use of two or fewer brakemen on trains operated by appellees, while in general the Arkansas laws require the use, in Arkansas, of a fireman and three brakemen on each such train. The argument that there is no conflict because appellees can comply with the Arkansas laws without violating the federal awards assumes erroneously that the only purpose of the federal minimum manning requirements is to prevent undermanning. However, an equally important purpose, implicit in the standards provided by Section 7(a) of Public Law 88-108, is to secure the benefits that accrue from the elimination of overmanning. The Arkansas laws are an obstacle to the execution of that purpose. The argument that there is no conflict because the Congress allegedly sought only to prevent a strike likewise misreads the purpose of the federal legislation. Because the prevention of a strike necessarily would affect the underlying manning issues, Congress directed a federal board to resolve those issues in accordance with the national interest. The purpose disclosed by that direction is frustrated by the continued application of the Arkansas laws.

3. The legislative history of Public Law 88-108 does not support the contention that the Congress intended an exception for minimum crew law states. In view of the importance of such an exemption and its inconsistency with the overall purposes of the federal legislation, such an exemption should not be implied in the absence of a clear demonstration that it was intended by the Congress as a whole. Such a demonstration is not provided by the comment in the report of the House Committee on Interstate and Foreign Commerce, amplified during the floor debate by the Chairman of that Committee, to the effect that the measure would not affect state manning laws. First, the Chairman of the Commerce Committee was imme-

diately challenged by the Chairman of the Rules Committee, whose Committee had also considered the bill and its effect on state manning laws; thus, it cannot be said that the House as a whole agreed with one view or the other. Second, there is no reference to any exception for minimum crew law states in the Senate report and debate, and the Senate acted in the face of authoritative advice that if Congress desired to avoid supersession it should amend the bill so to provide; thus it cannot be said that the "intent" of the Senate was not to preempt. Third, to the extent they differed, the bill eventually enacted was the bill adopted by the Senate rather than the House Committee's version. Accordingly, the most persuasive evidence of the Congressional intent is what the Congress actually *did*; and what it did cannot be reconciled with the continued vitality of state minimum crew laws.

4. The appellants' reliance on a supposed "safety" justification for the Arkansas statutes is unsound. The suggestion that the Court should not presume that the Congress meant to override state "safety" legislation is inappropriate in an instance like this, in which the Congress deals with the very subject matter of the state legislation, takes safety into account, and reaches a determination inconsistent with the state legislation. Moreover, it is now impossible to establish that the Arkansas laws are reasonably related to the requirements of safety, cf. *Southern Pacific v. Arizona*, 325 U.S. 761, 775-780 (1945), in view of the federal determination that safety does not justify the manning levels required by the Arkansas laws.

Equally unsound is the complex suggestion that the Arbitration Award should be viewed as a collective bargaining contract entered into pursuant to the Railway Labor Act, and, accordingly, that the validity of the Arkansas laws is established by a supposed "safety" exception to the

general rule that a collective bargaining agreement concerning a matter as to which federal law imposes a duty to bargain overrides inconsistent state laws. *Teamsters Union v. Oliver*, 358 U.S. 283 (1959); *California v. Taylor*, 353 U.S. 553 (1957). Apart from the fact that it is no longer possible to establish a safety justification for the Arkansas laws, the Award is *not* simply a collective bargaining agreement; it represents the considered judgment of a tribunal created by the Congress upon the very subject matter with which the Arkansas laws purportedly are concerned. Moreover, even if the Award is viewed as a railway labor collective bargaining contract, it nevertheless preempts the Arkansas laws. The preemptive effect of the Award must be tested under the Railway Labor Act and Public Law 88-108 in combination. The manning dispute which led to the enactment of Public Law 88-108 was one of the most difficult economic disputes in the history of labor-management relations. The Preamble to Public Law 88-108, and the President's Message to which Public Law 88-108 was the Congress' response, emphatically express the preference of the Congress and the Executive for solutions to the manning dispute "reached through collective bargaining." Indeed, the various statutory limitations on the scope of the arbitration, on which the appellants rely so heavily, are expressions of that emphatic preference. Accordingly, neither *Missouri Pacific R. Co. v. Norwood*, 283 U.S. 249, 258 (1931), which was decided under the Railway Labor Act alone, nor the reference to state safety legislation in *Teamsters Union v. Oliver*, *supra*, is controlling here. Rather, the controlling precedent is the *holding* in *Oliver* that "the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make, rather than in terms in an enactment of Congress," 358 U.S., at 296-297.

II. The Award, as such, is in force for only two years. Thereafter, the work rules established by the Award will continue to govern the manning of trains until those rules are changed through collective bargaining in the manner prescribed by the Railway Labor Act. However, arguments advanced by the appellants imply the contrary—that when the Award expires, the pre-Award rules will revive. The importance of this issue goes far beyond any issues as to preemption, for the manning rules in effect after the expiration of the two-year period will affect all carriers subject to the Award wherever they operate.

1. The Congress expected the Board to authorize the elimination of substantial numbers of unneeded positions and to provide generous separation allowances and long-term wage guarantees for employees adversely affected. Such provisions—which were included in the Award—are wholly inconsistent with automatic revival of earlier rules. The Congress did not intend that the railroads should pay millions of dollars in separation allowances in order to eliminate positions declared to be unneeded, only to be required after a few months to hire enough men to fill the very same positions.

Rather, as stated in Section 3 of Public Law 88-108, the Congress intended that the Award should be a "complete and final disposition" of the issues that it determined, and thus a point of departure for collective bargaining in the future. To be sure, when Congress integrated the arbitration into the Railway Labor Act, it provided—in the language of Section 8(j) of the Railway Labor Act as to the duration of arbitration awards—that the award should continue "in force" for only two years. But under the Railway Labor Act, the termination of an arbitration award does not terminate the parties' obligation to comply with the rules that the award established; by reason of the

"major disputes" provisions of the Act, those rules remain in effect until they are changed in the manner prescribed by the Act. The effect of a termination provision is simply to free the parties to resume collective bargaining.

2. The principles just stated will govern the situation following expiration of the Award in states that do not have minimum crew laws. They also refute appellants' contentions that preemption could not have been intended because of the supposedly "temporary" nature of the federal legislation, and that, if intended, preemption ceases at the end of the two-year period. The Congress intended a "complete and final disposition" of the original dispute and the establishment of new rules reflecting contemporary conditions, rules which would serve the justified interests of the parties and the public and which would remain in effect until changed through normal collective bargaining. Those rules, both as established by the Arbitration Award and as eventually modified through collective bargaining, must be effectuated in minimum crew law states as well as elsewhere if the Congressional intent is to be fully achieved.

#### **ARGUMENT**

At the heart of the legal issues raised in this case is a public policy question of large consequence: whether the effectiveness of a Congressionally sanctioned resolution of labor problems produced by automation can be limited by inconsistent state laws. The railroads and their employees share with other American industries both the anxieties and the hopes generated by modern labor-saving technology. In the case of the railroad industry, the need for securing the benefits of that technology is particularly urgent; if it is to continue to perform effectively its role as a principal mover of the nation's goods it must strengthen its

competitive position *vis a vis* other modes of transportation. And whatever may be the complete catalog of causes for the inroads that have been made by the railroads' competitors, there can be no dispute that excessive railroad labor costs have been a major factor. In recent years vigorous management, together with radical innovations not related to labor costs, such as "piggyback" service, have measurably improved the position of the railroads. But if the burden of excessive labor costs cannot be lifted, the railroads will be unable to afford a service that reflects fully the inherent advantages of railroad transportation, and the public will suffer.

At the same time, the public interest, as well as the interest of the railroads, embraces considerations other than dollars, and therein lies the dilemma. If the railroads were immediately to take full advantage of available technological changes, wholesale dismissal of employees would result.

As we have indicated, the quest for a reasonable resolution of these competing considerations has troubled railway labor negotiations since the advent of the diesel locomotive in the 1930's, and the tensions have become ever more aggravated as the pace of technological change has accelerated. The Arbitration Award of Board 282, rendered against the backdrop of the recommendations of the public bodies that explored the problem prior to the passage of Public Law 88-108, has given the first genuine promise of a breakthrough.

The fundamental thrust of the Award, as of the recommendations of the Presidential Commission and the Emergency Board, is quite simple and, in the railroads' view, eminently generous to the employees.<sup>12</sup> It is that the em-

<sup>12</sup> The railroads do not stand alone in holding this view. The court which upheld the Award, for example, commented that the Board "de-

employees who have devoted any substantial part of their working lives to the railroads—over two years in the case of firemen and any time at all in the case of other crew members—should not be required to look elsewhere for employment, but on the other hand that the railroads should not, once those employees have left, be required to hire new employees to fill needless positions. While under this scheme the railroads will be required to shoulder a very large cost that, strictly from an economic point of view, is waste, the railroads are not insensible of their obligations toward the employees who have served them long and faithfully, as is evidenced by the railroads' willingness to accept the job protection provisions—as well as all other provisions—of the recommendations of both the Presidential Commission and the Emergency Board. The promise held out to the railroads is that, having undertaken that burden for an interim period, ultimately they will be free to take full advantage of existing technology.

While it is regrettable that the parties could not take the first step in solving the automation problem without government intervention, it is the first step that is the hardest. The railroads are hopeful that the work rules prescribed by the Award will establish a base upon which, after the expiration of the Award, collective bargaining can be expected to build in effecting whatever adjustments may be desirable from time to time. And, as we show below, this was also the expectation of the Congress. The Congress intended that, after the expiration of the Award, the work rules prescribed therein should continue to govern the manning of trains until changed pursuant to normal collective bargaining under Section 6 of the Railway Labor Act.

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placed extreme consideration and even benevolence for the future of employees in regular service." *Brotherhood of L. F. & E. v. Chicago B. & Q. R. Co.*, *supra*, 225 F. Supp., at 18.

But in seven states, minimum crew laws foreclose the possibility of resolving, in the manner intended by the Congress, the problem of adjusting the manning of crews so as to afford the railroads and the public the substantial benefits of technological advances while insuring both the safety of operation and the welfare of employees. That is so even though, in view of the findings of Board 282, of the special boards established under its Award, of the Presidential Commission and of the Emergency Board, there can no longer be any genuine doubt that these state laws, however reasonable when passed, are now superannuated. Indeed, no appellant on brief has raised a voice in defense of the soundness of state minimum crew laws.

The question, then, as a matter of labor relations policy, is whether these archaic laws should bar the full realization of the promise of Public Law 88-108, thereby hampering the railroads in their efforts to provide the best possible service and casting upon the people of all of the states the attendant costs. In the first part of this argument, we urge that such a result, which is so plainly undesirable as a matter of common sense, is also insupportable as a matter of law.

We devote the last part of our argument to the question whether, upon the termination of the two-year period of the Award, the work rules prescribed by the Award are to remain in effect until changed pursuant to Section 6 of the Railway Labor Act or, instead, the old work rules are to be automatically reinstated. The resolution of this issue will affect operations in all states and will shortly be of critical importance. Since some of appellants' arguments erroneously imply that the old work rules will be reinstated, we think the Court should be fully advised of the character of the problem and of the reasons why the work rules pre-

scribed by the Award continue in effect after the expiration of the two-year period until changed in the manner provided by the Railway Labor Act.<sup>12</sup>

#### I. State Minimum Crew Laws Have Been Superseded by Federal Regulation.

The appellees have assembled the precedent relevant to the preemption issue and have analyzed the issue in detail. While we agree with appellees' argument and shall not attempt to cover fully all of the relevant considerations, we perhaps may assist the Court by a statement of our views concerning some of the more significant aspects of the case. The dispositive questions appear to be: Did the Congress in Public Law 88-108 take action with respect to a subject matter that is covered by the Arkansas statutes, and, if so, is the federal action inconsistent with the state laws? We submit that those questions should be answered in the affirmative and, consequently, that the Arkansas minimum crew laws cannot stand.

1. *The Congress took action with respect to a subject matter covered by the Arkansas statutes.* In Section 3 of Public Law 88-108, the Congress directed the Arbitration Board to make a "complete and final disposition of the . . . issues" covered by the parties' 1959 and 1960 notices. Those "issues," as they had been put to the Presidential Commission, the Emergency Board, and the Congress, cen-

<sup>12</sup> We support the appellees in their claim that the Arkansas laws, which in effect exempt all intrastate carriers from the burdens they impose, discriminate unconstitutionally against interstate carriers. As that issue turns upon the particular provisions of the Arkansas laws and thus is not of direct concern to the members of the *amicus* who do not operate in Arkansas, we do not discuss it further in this brief. We do note, however, that the presence of this constitutional issue renders inapplicable this Court's recent decision in *Swift & Co. v. Wickham*, — U.S. — (No. 9, 1965 Term). See *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, 342 U.S. 73 (1960).

tered upon determining the number of crew members that are required by a variety of considerations and authorizing the carriers to eliminate all unnecessary positions, provided that safety of operations was secured and existing employees were treated fairly. Thus the Congress responded to the President's request for action that would "help launch a new national effort to meet the growing challenge of worker displacement by technological and economic change. . . ." See *supra*, p. 13.

Not only is the subject matter of the federal statute—the number of employees to be used on trains—the same as that of the Arkansas statutes, but the federal statute on its face is to have nationwide application. No exception is made for minimum crew law states, nor is there such an exception in the Award of Board 282 or in the awards of the special boards that have dealt with crew consist in minimum crew law states under authority of Board 282's award. This is hardly surprising, for the automation problem was presented to the Presidential Commission, the Emergency Board, the Congress, and Board 282 as a national problem—as of course it is.

2. *The action taken pursuant to Public Law 88-108 is inconsistent with the state statutes.* It seems obvious that the federal arbitration awards rendered pursuant to Public Law 88-108 are inconsistent with the Arkansas statutes. The Award by Board 282 authorizes the elimination of 90% of firemen's positions, and the awards of the special boards respecting crew consist authorize the use of two or fewer brakemen, on appellees' trains. In sharp contrast, with certain minor exceptions the Arkansas laws require the use, in Arkansas, of a fireman and three brakemen on each such train.

The argument to the contrary most vigorously pressed is that the carriers can comply with both the state laws

and the federal awards by obeying the former. But this misconceives the purpose of the federal legislation. Appellants' contention might be valid if the Congress' purpose had been confined to the establishment of minimum manning requirements in order to protect the employees and the public from the consequences of undermanning. But that was only part of the task the Congress set for the Board. The Board was equally charged with protecting the public and the carriers from the consequences of *overmanning*. Its job was to determine what crew sizes are adequate to satisfy all relevant considerations, *so that the carriers might eliminate unneeded jobs*. The purpose was to achieve "progress plus protection," in the words of the Presidential Commission cited by the President—not protection alone. The continued application of the Arkansas laws will frustrate that important purpose of the federal law, a purpose that is implicit in the Section 7(a) standards—"adequate and safe transportation service to the public and . . . the interests of the carrier and employees affected"—and that is evident from the entire history of the dispute that led to the enactment of Public Law 88-108. In short, what the Board has authorized pursuant to federal law, the Arkansas laws prohibit.

The appellants also suggest that the Congress' sole purpose was to prevent a strike, and that, since enforcement of the state laws would not frustrate that purpose, the laws are not superseded. But it is clear that the Congress' purpose was not limited to preventing a strike. To be sure, it was that purpose that led the Congress to act. But it could not prevent the threatened work stoppage—which, it may be noted, would not have been limited to states not having minimum crew legislation<sup>14</sup>—without affecting the underlying dispute as to manning of trains. A simple strike

<sup>14</sup> See S. Rep. No. 450, 88th Cong., 1st Sess., p. 5.

prohibition would have determined the manning issues entirely in the carriers' favor. Conversely, prohibiting changes in the existing work rules, which also would have prevented a strike, would have determined the underlying dispute entirely in the unions' favor, leaving the carriers burdened with countless positions that two neutral federal tribunals had recommended be eliminated. Thus, to prevent a strike, the Congress had no reasonable choice but to regulate the working conditions in dispute, either directly, as it had in 1916 by requiring an eight-hour day,<sup>15</sup> or through an appropriate federal agency. It chose the latter, and directed the agency to decide the manning issues in accord with the requirements of the national interest expressed in the Section 7(a) standards. The purpose disclosed by that direction is no less real, and is quite as important, as the purpose of preventing a work stoppage. Because "the application of state law . . . would operate to frustrate" that "purpose of the federal legislation," the state laws "must give way." *Teamsters Union v. Morton*, 377 U.S. 252, 258 (1964). The state regulation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (emphasis added).

3. *The contentions of appellants based upon the legislative history of Public Law 88-108 are unsound.* In answer to the analysis outlined above, the appellants assert that the legislative history of Public Law 88-108 evidences that the Congress did not intend preemption. The appellees are, we submit, on sound ground in maintaining that, since what the Congress *did* is incompatible with the continued vitality of the state laws, what some members of the Congress may have said at one time or another is immaterial. And what

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<sup>15</sup> 30 Stat. 731; see *Wilson v. New*, 243 U.S. 332 (1917).

the Congress did, as is shown above, cannot be reconciled with the continued vitality of state minimum crew laws.

But even if resort to legislative history is appropriate, appellants are not aided. An exemption of minimum crew law states from the scope of the legislation should not be implied in the absence of the clearest possible demonstration that it was intended by the Congress *as a whole*, in view of the importance of such an exemption and its inconsistency with the overall purposes of the legislation. Cf., *California v. Taylor*, 353 U.S. 553, 561-567 (1957). The only substantial support for appellants' argument is a comment in the report of the House Committee on Interstate and Foreign Commerce (H.R. Rep. No. 713, 88th Cong., 1st Sess., p. 14), as amplified by the Chairman of that Committee during the floor debates (109 Cong. Rec. 15273), to the effect that the measure before the House would not supersede state minimum crew legislation. That comment is not sufficient to carry appellants' burden for several reasons.

In the first place, when the Chairman of the House Committee on Interstate and Foreign Commerce expressed on the floor of the House the view of his Committee that state minimum crew laws would not be superseded, he was immediately challenged by the Chairman of the House Rules Committee, who also supported the bill and whose Committee had also considered the bill and its effect upon state minimum crew legislation. (109 Cong. Rec. 15271, 15273.) Even apart from the other legislative history cited by appellees, therefore, it cannot be said with any certainty from what was *said* in the House of Representatives that the House as a whole agreed with the views of the one Committee and its Chairman or with the views of the other Committee and its Chairman.<sup>16</sup>

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<sup>16</sup> See *Chicago, M. & St. R. Co. v. Acme Freight*, 336 U.S. 465, 475 (1949), where this Court gave "little weight" to a committee report "not previously

Secondly, the report by the Senate Committee on Commerce (S. Rep. No. 459, 88th Cong., 1st Sess.) did not contain any remarks similar to those in the House Report, and no one suggested during the debates in the Senate that the legislation would not be effective in states having minimum crew laws. Rather, the Senate Report and the Senate debates, like the legislation itself, assume that a nationwide problem was involved and thus do not expressly deal with the possibility of an exception for states having minimum crew laws.<sup>17</sup> The Senate acted, moreover, in the face of advice by the General Counsel of the Interstate Commerce Commission, in the Senate Hearings (pp. 400-401), that if the Congress wished to be certain that state minimum crew laws would not be affected, the bill should be amended so to provide.<sup>18</sup> Even if it could be said that the House of Representatives did not intend state minimum crew laws to be superseded, therefore, there is no basis whatsoever in the legislative history for believing that the Senate shared that intent, and good reason for believing that it did not.

Thirdly, to the extent that there were inconsistencies between them, the bill eventually enacted was that adopted by the Senate rather than that reported by the House Committee on Interstate and Foreign Commerce. The House amended H.J. Res. 665 to conform to S.J. Res. 102, and then passed the Senate measure (109 Cong. Rec. 15271, 15288, 15295-96).

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submitted to members of the committee and expressly contradicted without challenge on the floor of the House by a ranking member of the committee. . . ."

<sup>17</sup> E.g., S. Rep. No. 459, 88th Cong., 1st Sess., pp. 4-6; 109 Cong. Rec. 15048-15049, 15050, 15051.

<sup>18</sup> The bill under consideration at the time was the Administration bill providing for determination of the manning issues by the I.C.C. However, the decision of the Congress to employ instead an arbitration board was, as appellants have demonstrated (Br. pp. 53-54), unrelated to the presumption issue.

In view of these considerations and those discussed in appellees' brief, we believe that the court below was correct in observing that "if any rational conclusion can be drawn from a legislative history on the question . . . it is that the Congress intentionally elected not to include a saving provision for such [state minimum crew] laws and thereby create local exceptions to the authority of the arbitration board to fix the size of train crews on a nationally uniform basis" (R. 266). At the least, it cannot be said that the legislative history evidences a clear intent on the part of the Congress to except minimum crew law states from the scope of Public Law 88-108. The most persuasive evidence of the Congressional intent remains what the Congress did. On that basis, as we have said, there can be no doubt: What the Congress did in Public Law 88-108 undercuts the Arkansas and other minimum crew laws and, therefore, by virtue of the Supremacy Clause, such laws are dead.

*4. Appellants' arguments based upon the purported safety justification for the minimum crew laws are unsound.* Appellants' arguments based upon the proposition that the minimum crew laws are safety measures are not very clear, but they appear to make two separate points—both of which are without substance.

The first point appears to be that the Court should presume that the Congress did not intend to override state safety legislation. That argument ignores the fact that the Congress in enacting Public Law 88-108 was specifically concerned with the relation of the manning of trains to safety of operation, and that the Arbitration Board was mandated to and did give large weight to that factor. Whatever may be the situation with respect to state safety legislation in general, when the Congress has dealt with the very subject of that legislation and has reached a de-

termination inconsistent with that legislation, the "presumption" should be that the Congress intended to preempt the state legislation. No one has suggested that the federal government lacks the power to regulate the manning of trains in interstate commerce; when it does so, as here, inconsistent state legislation, whether grounded on "safety" considerations or something else, must fall. Cf., *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 227-228, 229-236 (1947); *New York Central R. Co. v. Winfield*, 244 U.S. 147 (1917); *Southern R. Co. v. Railroad Comm'n*, 236 U.S. 439, 446-448 (1915); *Pennsylvania R. Co. v. Public Service Comm'n*, 250 U.S. 566, 569 (1919); *Napier v. Atlantic Coast Line*, 272 U.S. 605 (1926); *Northern Pac. R. Co. v. Washington*, 222 U.S. 370, 375-380 (1912).

Moreover, this as well as appellants' other argument based upon an alleged safety justification for the Arkansas minimum crew laws is undermined by the impossibility of establishing that the minimum crew levels specified by those laws are reasonably related to the requirements of safety. Cf., *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 775-780 (1945). It is doubtful whether those minimum crew levels ever were justified by safety considerations. But whatever may have been the situation when the Arkansas laws were enacted over a half century ago, they cannot now be so justified. At the specific direction of the Congress, the Arbitration Board and the special boards created under its Award extensively considered the minimum crew levels consonant with reasonable safety of operations and determined, as had the Presidential Commission and the Emergency Board, that under present-day conditions safety of operations will be adequately insured by crews substantially smaller than those required by the Arkansas laws. Whatever might be the situation in the absence of such federal determinations, Arkansas cannot be permitted to justify its mini-

imum crew requirements by a contrary evaluation of the requirements of safety today or by reliance upon an evaluation that, even if warranted when made, has now been demonstrated by impartial federal agencies to be insupportable under contemporary conditions.

The second point that appellants appear to draw from their premise that the minimum crew laws are safety measures is more complicated than the one just discussed, but equally erroneous. In effect, appellants contend that the Congress intended the Arbitration Board to fashion an agreement for the parties to the manning dispute, and thus that the Award should be regarded as the equivalent of a collective bargaining agreement. Appellants must, of course, acknowledge that *Teamsters Union v. Oliver*, 358 U.S. 283 (1959), and *California v. Taylor*, 353 U.S. 553 (1957), hold that state laws may be preempted by collective bargaining agreements entered into pursuant to federal labor legislation; but they argue that the minimum crew laws, as safety measures, come within an exception supposedly recognized in the *Oliver* opinion for "a case of a collective bargaining agreement in conflict with a local health or safety regulation . . .," 358 U.S., at 297.<sup>19</sup>

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<sup>19</sup> We note that *Oliver* did not hold that "a local health or safety regulation" could not or would not be preempted by a collective bargaining agreement authorized by federal law, but merely recognized that such a regulation was not there involved. *Terminal Ass'n v. Trainmen*, 318 U.S. 1, 6-7 (1943), indicates that the Railway Labor Act, and bargaining thereunder, did not occupy the field to the exclusion of state laws regulating "sanitary facilities and conditions, safety devices and protections, purity of water supply, fire protection" and similar subjects. But as we show in the text, the number of men assigned to train crews is one of the most critical economic issues in railway labor negotiations, unlike the subjects described in *Terminal Ass'n*.

Thus, appellants are on sound ground in maintaining (Dr. pp. 32-37) that state minimum crew laws seek "specifically to adjust relationships in the world of commerce," *Teamsters Union v. Oliver*, *supra*, 358 U.S., at 297, and accordingly are to be distinguished from ordinary health and safety regulations for purposes of the holding in the *Oliver* case. In this

In addition to the impossibility, referred to above, of establishing that the minimum crew laws in fact are reasonably related to the requirements of safety, the short answer to this contention is that the Arbitration Award is more than a "collective bargaining agreement," even though it prescribed work rules which modified and became a part of existing collective bargaining agreements (see p. 46, *infra*); the Award represents the considered judgment of an arbitration board created by the Congress and dominated by impartial neutral members upon the very subject with which the minimum crew laws purport to be concerned.

There is, in addition, a more fundamental answer to appellants' contention. We agree with appellees that, putting aside Public Law 88-108 and viewing the Award simply as the equivalent of a collective bargaining agreement arrived at pursuant to the Railway Labor Act, it would preempt the Arkansas statutes. Surely *Missouri Pacific R. Co. v. Norwood*, 283 U.S. 249, 258 (1931), has been undermined by the subsequent development of the preemption doctrine in the labor relations area and is in addition dis-

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connection, how two of the appellants in this case—the BRT and the BLE—regard state minimum crew laws was evidenced by recent announcements in their publications that they had agreed with carriers in certain states to withdraw from all litigation as to the legality of the minimum crew laws in the states in which those carriers operate and also to withdraw their opposition to repeal of such laws. In exchange, the carriers agreed to provide job security for firemen and trainmen now in service (and in the case of the BRT agreement to maintain crew consists at certain presribed levels that are below the levels required by the Arkansas statutes and by the laws of some of the states in question). See "Trainmen News," February 8, 1965, p. 1 ("BRT Does It Again! Crew Consist Pact Safeguarding Jobs Won on 24 Roads"); "The Locomotive Engineer," January 15, 1965, pp. 1, 2 (the BLE "has won full protection for every fireman-helper on the rosters of the Eastern Railroads even if the state full-crew laws now protecting those jobs are repealed"). In an editorial announcing the BRT agreement (which agreement appears in Appendix IV hereto), the President of the BRT stated: "This agreement places the matter of the crew consist—long a matter of bitter dispute—where it belongs: in collective bargaining agreements." "Trainmen News," February 8, 1965, p. 1.

tinguishable on other grounds set forth in appellees' brief. But *Norwood* can be disregarded, even if still valid in the context in which it was decided, because the preemptive effect of the Award must be tested under the Railway Labor Act and Public Law 88-108 *in combination*. Whatever may be said about the intent of the Congress with respect to prior agreements as to manning arrived at under the Railway Labor Act alone, Public Law 88-108 introduces a wholly new element which cannot properly be ignored, even if it be assumed that the Award thereunder is the equivalent of a collective bargaining contract.

The history of the dispute set forth in our Statement and in the appellees' brief demonstrates that the parties to the dispute, the Presidential Commission, the Emergency Board, the President and the Congress all recognized that the work rules governing the manning of trains were the subject of perhaps the most vexing and difficult railway labor relations controversy in decades, that resolution of the dispute would have important *economic* consequences to both the railroads and to their employees, that the contentions of both sides centered upon the reasonable requirements of safety, and that the interest of the nation as a whole required the Congress, as the President put it, to "help launch a new national effort to meet the growing challenge of worker displacement by technological and economic change." See p. 13, *supra*.

This "new national effort" was to consist of solutions arrived at through collective bargaining, insofar as that method was consistent with the public interest. Thus, the Presidential Commission stated "that the solutions to the issues before us must be found within the framework of collective bargaining," noting that in other industries it "is generally considered to be a function of management to determine the size and composition of the work force," but in the railroad industry "the employees have a legiti-

mate collective bargaining interest in the matter of crew consist, and it is our view that the collective bargaining process should remain the basic method for resolving disputes concerning this matter." PRC Report, pp. 7, 55, 58. The President, in his Message to the Congress, repeated this theme, stating that his objective was to propose action that "[e]ncourages the parties to achieve their own solutions through collective bargaining," and that legislation which would provide only for interim changes in work rules "for those situations and for such length of time as the parties are unable to agree by collective bargaining" was desirable so as to "preserve and prefer collective bargaining and give precedence to its solutions." Indeed, while the legislation he proposed would have covered all issues between the parties, it was, he said, "most appropriate to the disposition of those rule changes involving the manning of train and engine crews—the automation issues . . ." Senate Hearings, pp. 8, 10; House Hearings, pp. 9, 10 (emphasis added).<sup>20</sup>

Public Law 88-108 reflected this approach. The preamble to the Joint Resolution, for example, recited that it was desirable to resolve the dispute over manning "in a manner which preserves and prefers solutions reached through collective bargaining," even though the breakdown of that process required federal intervention. As stated in the Senate Report, the Joint Resolution was "designed to insure a prompt, peaceful, and fair settlement of the 4-year-old railroad work rules dispute by collective bargaining where possible and by arbitration where bargaining has not succeeded." S. Rep. No. 459, 88th Cong.,

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<sup>20</sup> See also, e.g., Senate Hearings, pp. 39, 40, 44, 57, 69-70, 72, 375, 430-432, 451-459, 474, 475, 481, 483, 490-491, 499-500, 516-517, 568, 607, 622-623, 655-656, 665; House Hearings, pp. 32, 33, 37, 39, 81, 591, 621, 652, 672, 735, 770, 771-772, 810, 829, 910, 987-988, 1000; 109 Cong. Rec. 15048, 15049, 15281, 15283, 15286, 15287, 15290.

1st Sess., p. 3. Consequently, the scope and effect of the arbitration were limited in various ways, the most important of which restricted the duration of the Arbitration Award to not more than two years, after which the work rules prescribed in the Award are subject to bargaining under Section 6 of the Railway Labor Act, although they continue in effect while such bargaining is in process.<sup>21</sup>

In these circumstances, neither *Norwood* nor the so-called "safety" exception to this Court's holding in *Oliver* are controlling, even if the Award is deemed to be the equivalent of a collective bargaining agreement. Rather, the truly relevant precedent is the holding in *Oliver*. The emphatically expressed preference of the Congress and the Executive for solutions to the manning dispute reached through collective bargaining will as surely be frustrated in minimum crew law states, if those laws are not preempted, as will be the solution imposed by arbitration pending such collectively bargained solutions. If ever there was a situation which justified application of the holding

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<sup>21</sup> We discuss the limitation upon the duration of the Award and its significance in detail at pp. 38-53, *infra*. Among other things, we demonstrate that the limitation upon the duration of the Award does not, as appellants argue, indicate that preemption was not intended or that the Arkansas laws will revive upon expiration of the two-year period, even if preempted during that period. To the extent that appellants rely also upon the other limitations upon the scope and effect of the Award—the restriction of arbitration to matters as to which the parties were not in agreement and to carriers who were parties to the 1959 and 1960 notices, and the freedom of the parties to supersede the Award by voluntary agreements during the life of the Award—to support their argument that preemption was not intended, those limitations also merely reflected the preference of the Congress for solutions reached in collective bargaining. Thus, the reason for the limitations is inconsistent with an intent not to preempt state minimum crew laws, as such laws, of course, frustrate solutions reached in collective bargaining as well as those imposed by arbitration. Moreover, the fact that the Congress expressly placed some limitations upon the scope and effectiveness of arbitration under Public Law 88-108 indicates that further unexpressed limitations, such as an exception for states having minimum crew laws, were not intended, rather than that they were, as appellants appear to argue.

in *Oliver* that "the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make, rather than in terms in an enactment of Congress," 358 U.S., at 296-297, surely this is such a situation. The Congress has taken the question of manning in hand because of its recognized importance to the national interest, has expressed its preference for a solution of the question through collective bargaining, and has sanctioned an interim solution by arbitration to be used as a point of departure in any future negotiations, all of which is squarely inconsistent with the continued enforcement of state minimum crew laws. Even if the Award be viewed as analogous to a collective bargaining contract, therefore, the Award and the collective bargaining agreements that may be made in its wake should be held to override conflicting state legislation.

**II. The Rules Established by the Award Will Continue to Govern the Manning of Trains, After the Expiration of the Two-year Period During Which the Award Is In Force, Until Those Rules Are Changed in the Manner Prescribed by the Railway Labor Act.**

Pursuant to Section 4 of Public Law 88-108, the Arbitration Award provides that it "shall continue in force" for two years from its effective date unless the parties agree otherwise (R. 95). That two-year period will end on January 25, 1966, except with respect to firemen, as to whom it will end on March 31, 1966, by agreement of the interested parties. Appellants urge that this limitation upon the duration of the Award demonstrates both that preemption of state minimum crew laws was not intended by the Congress and that, if intended, preemption ceases upon the termination of the two-year period of the Award with a consequent revivification of the state minimum crew laws.

The appellants, in their briefs, do not spell out their un-

derstanding of the situation that will exist with respect to the work rules governing the employment and use of firemen and trainmen upon expiration of the two-year period during which the Award "shall continue in force." Their arguments based upon the expiration of the Award appear to assume, however, that the Congress intended a restoration of the *status quo* existing before the dispute which culminated in the enactment of Public Law 88-108, and, consequently, that the work rules in effect for years prior to the Award will be revived.

We show below that, to the contrary, the work rules established by the Award will continue to govern the manning of trains after the expiration of the two-year period during which the Award is in force *as an award*, until those rules are changed in the manner prescribed by the "major disputes" provisions of the Railway Labor Act. The Congress did not intend a return to the preexisting *status quo* under work rules which have long been regarded by almost everyone to be obsolete and which led to the frustration of normal collective bargaining, but rather intended that the work rules established by the Award should constitute a new and more realistic *status quo* which would provide a basis for normal collective bargaining in the future.

Before discussing this matter in detail, we emphasize that its importance goes far beyond any issues as to the pre-emption of state minimum crew laws. The work rules governing the manning of trains after the expiration of the two-year period of the Award affect all carriers subject to the Award wherever they operate and whatever may be the ultimate fate of state minimum crew laws. Thus, the BLF&E has informed the carriers that in its view the work rules in existence prior to the Award—the rules that were repudiated by the Award—will go back into effect upon termination of the two-year period, and that, in consequence, firemen again must be used on virtually all trains although

they serve no necessary function. In mid-November 1965, the BLF&E served the carriers with a notice, purportedly pursuant to Section 6 of the Railway Labor Act, in which it proposed a new agreement as to the use of firemen to be effective following expiration of the Award. The letter transmitting the notice stated, however, that the position of the BLF&E is that the pre-Award rules will automatically be operative upon expiration of the Award, if the carriers do not in the meantime agree to the organization's demand for a new contract.<sup>22</sup>

*1. The rules established by the Award will govern the manning of trains until changed through collective bargaining.* In assessing the validity of the position thus taken by the BLF&E, it is worthwhile to note the practical consequences of that position. As of July 1965, some 17,000 firemen's assignments had been eliminated pursuant to the Award, approximately half of them through promotion or by natural attrition.<sup>23</sup> In addition, as of September 1965, the railroads had paid over \$36 million in separation allowances to firemen who had rejected comparable job offers and elected instead to be separated from service and to other firemen whose services were subject to termination under the Award.<sup>24</sup> Thus, the BLF&E is claiming: (1) that

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<sup>22</sup> See Notice No. 1 in Appendix II hereto. After setting forth the demand for a new contract to be effective on March 31, 1966, the notice continues: "This proposal is made to you, notwithstanding the fact that upon the expiration of the Award of Arbitration Board 282, the collectively bargained agreement with respect to employment of firemen (helpers) will be in full force and effect. We shall expect that on and after 12:01 a.m., March 31, 1966, you will comply fully with the collectively bargained agreement with respect to employment of firemen (helpers) on this property, unless another agreement has been reached in the meantime."

<sup>23</sup> Hearings before the Senate Committee on Commerce on the Administration of Public Law 88-108, 89th Cong., 1st Sess. (Aug. 2-Sept. 28, 1965), Tr. pp. 1095, 1270 (hereinafter referred to as "1965 Senate Hearings").

<sup>24</sup> 1965 Senate Hearings, Tr. pp. 1297, 1451-1452.

when the two-year period during which the Award is "in force" ends, everything that has happened *since 1959* in connection with the manning disputes will be entirely undone, leaving the parties where they began six years ago; (2) that as of 12:01 a.m. on March 31, 1966, the railroads must find enough men to hire to fill over 17,000 firemen's assignments eliminated pursuant to the Award; and (3) that the expenditure by the railroads of many millions of dollars in separation allowances brought them in return, not the elimination of unneeded assignments, but only the right to operate certain trains without firemen for a relatively few months.

The Congress intended nothing of the sort. Rather, it provided for an Award the provisions of which it knew would be utterly inconsistent with the automatic restoration of some earlier *status quo* at the end of two years. It realized fully from the reports of the Presidential Railroad Commission and the Emergency Board that any Award likely would result in the elimination of several thousand unneeded assignments<sup>25</sup>—just how many thousand assignments should be eliminated is what the dispute really was all about.<sup>26</sup> Moreover, the Congress expected the Board to include in its Award protections for present employees which, to be adequate, would have to extend beyond two years. The Presidential Railroad Commission and the Emergency Board had both recommended substantial separation and relocation allowances and long-term guarantees against reductions in wages. Similar recommendations had

<sup>25</sup> E.g., "It is impossible for those who represent the brotherhoods to go back to their members with any great fruits of victory, because it is inevitable that jobs that are rendered needless and unnecessary because of automation and mechanization must go. And any other course is not consistent with the efficiency, competitive ability, and powers of this country and its free enterprise system." 109 Cong. Rec. 15057 (Senator Cotton).

<sup>26</sup> E.g., House Hearings, pp. 183, 804-805; Senate Hearings, pp. 367, 501, 669-670, 663.

been made by the President when he asked the Congress to act.<sup>27</sup> As was found by Arbitration Board No. 282, there was a considerable area of tentative agreement among the parties with respect to the nature of the provisions that should be made for the protection of employees already in service (R. 110, 112, 124-128, 136-137). Thus, when Congress provided in Sections 3 and 7(a) of Public Law 88-108 that the Board should "incorporate" the parties' agreements in its Award and give "due consideration" to their "tentative agreements," it surely contemplated that such protective provisions almost certainly would be included in the Award. That the Congress *specifically* intended the inclusion of such provisions was made clear during the debate in the Senate. A proposal to amend the Joint Resolution to require the Board, in terms, to incorporate such provisions in its Award was withdrawn by its sponsor when the Chairman of the Senate Commerce Committee explained that such a requirement was implicit in the provisions of the Senate bill. (109 Cong. Rec. 15122-15123; see also H. R. Rep. No. 713, 88th Cong., 1st Sess., pp. 8, 9, 12, 23-24, 25-26.)

Accordingly, the Board did just what the Congress expected when it authorized the elimination of unneeded positions, subject, however, to comprehensive arrangements for the protection of the employees similar in nature to those recommended by the earlier tribunals and by the President. Examination of those provisions shows that they are entirely irreconcilable with the notion that the solution was meant to be merely a temporary expedient. The Award provided substantial separation allowances in amounts equal to one year's pay for most firemen whom the railroads were permitted to separate from service. (Award, II, C-2,

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<sup>27</sup> These recommendations were given extensive and detailed study during the hearings on the Administration bill. See note 9, p. 14, *supra*.

C-3, C-6, R. 86-87.) It provided relocation allowances and guarantees against reductions in wages effective for *five years* for men who were offered and given comparable jobs in other crafts. (Award, II, C-6, R. 86-87.) It provided that other firemen should retain the right to engine service assignments, not for two years, but, in effect, for the remainder of their careers—i.e., until “retired, discharged for cause, or otherwise removed from the carrier’s active working lists of firemen . . . by natural attrition.” (Award, II, C-7, R. 87.) And it provided a similar life-time guarantee for all train crew employees employed on the effective date of the Award. (Award, III, D-2, R. 94-95.)

It would be utterly absurd to suppose that the Congress intended that the railroads should pay millions of dollars in separation pay to eliminate unneeded positions and stimulate the transfer of trained personnel to other occupations, only to be required after a few months to hire new untrained men to fill the very same positions. Not beside the point in this connection is the fact that the appellant labor organizations do not suggest that when the two-year period during which the Award is “in force” has ended, the “five-year” wage guarantees, for example, will no longer be effective.

Rather, what the Congress intended, as it said in Section 3 of the Joint Resolution, was that the Award should “constitute a *complete and final disposition*” of the issues in dispute. By providing a “complete and final disposition” of those issues, the Award put an end to the particular dispute which had already continued for four years and threatened to erupt in a nationwide railroad strike, and furnished a point of departure for collective bargaining in the future.

To be sure, the Congress provided for eventual expiration of both Public Law 88-108 and the Award, as such. But

the Congress did not intend, by so providing, to make the Award any the less a "complete and final disposition" of the dispute that the Award resolved. Rather, as the Congress said in the Preamble to the Joint Resolution, it sought to achieve its ends in a way that "preserves and prefers solutions reached through collective bargaining." See pp. 35-37, *supra*. Accordingly, it provided for expiration after two years so that the parties might resume normal relations under the Railway Labor Act. As the Chairman of the House Commerce Committee explained during the debate in the House (109 Cong. Rec. 15279):

"[W]e have been trying to take a course that would bring these issues to final resolution where they could be settled. The resolution provides that on the two major issues, the order of the arbitration board would be in force for a period of 2 years. Then the issues go back under the regular established procedure of collective bargaining."

The Congress achieved that objective by integrating the arbitration into the Railway Labor Act. It rejected the solution proposed by the President—"interim" regulation of all issues raised by the parties' notices by the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act—and provided instead for a "complete and final disposition" of the two manning issues by a seven-man arbitration board in accordance with Sections 7 through 9 of the Railway Labor Act. It provided in Section 4 of Public Law 88-108 that, to the extent possible, "the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, [and] the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act." In sum, as was stated in the Senate Committee report, the Joint Resolu-

tion "adopt[ed] the time-tested provisions of the Railway Labor Act" in effectuating the Congress' purpose of insuring a peaceful settlement of the work-rules dispute "by collective bargaining where possible and by arbitration where bargaining has not succeeded." S. Rep. No. 459, 88th Cong., 1st Sess., p. 3.

However, because an arbitration under the Railway Labor Act requires an agreement to arbitrate, the provisions of which are governed by Section 8 of the Act, and because the parties had agreed in principle to arbitration but had "been unable to agree upon the terms and procedures of an arbitration agreement" (P.L. 88-108, Preamble<sup>28</sup>), the Congress had to write the equivalent of an arbitration agreement for them. It did that in Public Law 88-108; in this respect the Joint Resolution supplanted the usual agreement to arbitrate. *Brotherhood of L.F. & E. v. Chicago, B. & Q. R. Co.*, *supra*, 225 F. Supp., at 18. Thus, where the Administration bill had provided for interim ICC rules that would "remain operative" for two years, Public Law 88-108 provided in the language of Section 8(j) of the Railway Labor Act that the Award "shall continue in force" for a similarly limited period.<sup>29</sup> Presumably, there-

<sup>28</sup> "Whereas, on August 16, 1963, the carrier parties to the dispute accepted and the organization parties to the dispute accepted with certain reservations the Secretary of Labor's suggestion that the fireman (helper) and crew consist issues be resolved by binding arbitration but the said parties have been unable to agree upon the terms and conditions of an arbitration agreement." P. L. 88-108, Preamble; see also S. Rep. No. 459, 88th Cong., 1st Sess., pp. 3, 9; H.R. Rep. No. 713, 88th Cong., 1st Sess., pp. 3, 12-13.

<sup>29</sup> Section 8 of the Railway Labor Act provides that: "The agreement to arbitrate . . . (j) shall . . . fix the period during which the award shall continue in force . . ." The last sentence of Section 4 of Public Law 88-108 provides that: "The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise."

sion was intended to mean what it means in way Labor Act arbitration agreement.

Railway Labor Act—unlike what may be the ies not governed by that Act—the expiration during which an arbitration award is “in t terminate the parties’ obligation to comply prescribed by the award. Section 6 of the carriers and labor organizations to “give days’ written notice of an intended change affecting rates of pay, rules, or working Therefore, when an arbitration award settles hich such a notice gives rise, unless it denies hange entirely, it effects a change in, and its gely become a part of, the existing agreements arties—just as did the Award, *in terms*, in consequently, the effect of duration provisions abor arbitration award is governed by the vern the termination of railway labor agree-

are provided by the “major disputes” proviilway Labor Act,<sup>52</sup> in particular the require-

(1) of the Award, for example, provides that: “All regulations, interpretations, and practices, however respect to the employment of firemen (helpers) shall bed except as modified by the terms of this Award.”

pointed out by appellees (Br. p. 62, n. 43), the “agreements in Section 6 of the Railway Labor Act (which requires proposed “changes in agreements”) include arbitration pursuant to agreements to arbitrate entered into under let. The purpose of Section 6—to encourage peaceful management disputes—is equally applicable whether prescribed by a collective bargaining contract, as such, ion award. In both cases, the terms of employment intended to create a continuing status which could be king the steps required by the “major disputes” proway Labor Act.

<sup>52</sup> *First, Second, Seventh*, 155-160. Those provisions duty to “exert every reasonable effort to make and main-

ment of Section 6 that carriers and labor organizations "give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions." After the expiration of an agreement, "unless the terms of the agreement were still to be followed there would be 'an intended change,' which would bring into play the thirty-day notice provision of § 6." *Manning v. American Airlines*, 329 F.2d 32, 34 (2d Cir. 1964). Accordingly, the terms of the expired agreement continue to govern the terms and conditions of employment, in the railroad industry, until they are changed in the manner prescribed by the Act—i.e., through service of the required notice and pursuit of a peaceful settlement through the prescribed statutory procedures. *Ibid.* "The effect of § 6 is to prolong agreement subject to its provisions regardless of what they say as to termination." *Ibid.* "[T]he very purpose of § 6 is to stabilize relations by artificially extending the lives of agreements for a limited period regardless of the parties' intentions" as expressed in termination provisions included in their contracts. *Ibid.*<sup>22</sup>

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tain agreements concerning rates of pay, rules, and working conditions (Section 2 *First*), and the specific duty, referred to in the text above, to give notice of intended changes in such agreements (Section 6). Following service of such a notice, the parties must proceed with conferences (Sections 2 *Second* and 6), mediation (Sections 5 and 6), arbitration, if agreed to by both parties (Sections 7-9), and emergency board proceedings, if an emergency board is appointed by the President (Section 10). The purpose of those provisions, as stated in the Railway Labor Act itself, is to facilitate the settlement of disputes as to rates of pay, rules, and working conditions, "in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." (Section 2 *First*.) See *California v. Taylor*, 353 U.S. 553, 566 (1957).

<sup>22</sup> The desirability as a matter of policy of the holding in *Manning*, that an expired railway labor agreement continues to govern rates of pay, rules, and working conditions until they are changed in the manner prescribed by the "major disputes" provisions of the Railway Labor Act—a holding required by the terms of Section 6—is evident from an examination of the alternative possibilities. (1) If, upon expira-

To summarize, the Congress contemplated a relatively short period in which the parties could adjust to the new work rules prescribed by the Arbitration Award without being subjected to economic pressures designed to bring about a change in those work rules. During that period of adjustment, eventually established at two years, the Award is to "continue in force" by its own terms, and "the regular established procedure of collective bargaining" under Section 6 of the Railway Labor Act, including the possibility of resort to strikes or other self help once the procedures of Section 6 are exhausted, is in effect suspended. After the expiration of the two-year period of adjustment, the Award no longer continues in force and the parties are free to resume collective bargaining pursuant to the "regular established procedure" prescribed by Section 6. But until changed pursuant to such collective bargaining, the work rules prescribed by the Award continue in effect; those work rules constitute the *status quo* upon which the collective bargaining must be based. Thus, the Congress accomplished what it set out to do: to provide a "final

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tion, the parties to such an agreement were free immediately to use self-help to effect changes in the rates of pay, etc., which existed under the expired agreement—i.e., if the carriers could effect such changes unilaterally and the unions could strike to obtain such changes—the statutory procedures designed to facilitate the amicable settlement of major disputes would be avoided entirely, thus defeating their purpose. (2) Automatic reversion to earlier rules—to a "*status quo*" which has long since ceased to exist—would create a host of frequently insurmountable practical problems, as this case illustrates well. (3) The third and last alternative to the holding in *Manning* is that after expiration there simply is no binding agreement with respect to the subject matter of the expired agreement, in which case the carrier would be free to do as it chooses with respect to that subject matter, while the employees, to obtain a "change in agreements" to cover that subject matter, would be obliged to serve Section 6 notices and exhaust the statutory "major disputes" procedures before they might strike in opposition to whatever practices the carrier chooses to follow. The untenable nature of these alternatives demonstrates the soundness of the holding in *Manning* and of its application here.

resolution" of the original dispute growing out of the old work rules, and then, after two years, to remit the parties to "the regular established procedure of collective bargaining" (109 Cong. Rec. 15279) under Section 6 of the Railway Labor Act if changes in the work rules established by the Award should then be desired.

Indeed, the labor organizations themselves have recognized on occasion that the requirements of the Railway Labor Act with respect to such termination provisions are as we describe them here. For example, counsel for the BLE even expected such results under the somewhat different measure proposed by the President.<sup>\*\*</sup> He testified before the House Commerce Committee that the effect of the expiration of the "interim" ICC rules provided for in the Administration bill would be that (House Hearings, p. 682):

" [W]e would be enabled to serve a notice under section 6 of the Railway Labor Act and begin at that time

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<sup>\*\*</sup> The Administration bill provided for "interim" regulation by the L.C.C. of the subject matter of the parties' original notices for a two-year period. Accordingly, divergent views as to the effect of the expiration of the L.C.C. rules were expressed during the hearings on that bill. The Secretary of Labor thought that the parties' original notices would remain in effect, see Senate Hearings, pp. 81-82, in which case the parties might have been free to use self-help, pursuant to those notices, immediately after the L.C.C. rules expired. On the other hand, as indicated in the text above, counsel for the BLE was of the view that the effect of expiration of the I.C.C. rules would be governed by Section 6 of the Railway Labor Act, and therefore, that new Section 6 notices would be required if any of the parties to the dispute desired to change the practices followed pursuant to the I.C.C. rules after their expiration. Of course, whatever the case under the Administration bill, for reasons indicated above the Joint Resolution settles the problem by providing for arbitration under the Railway Labor Act. Moreover, by providing that the Award should "constitute a complete and final disposition" of the issues raised by the parties' original notices (P.L. 88-108, § 3)—language that first appeared in the Senate committee bill and that had not been used in the Administration bill—Congress put a complete and final end to the dispute *under those notices* and, as indicated in the text herein, a point of departure for collective bargaining in the future.

a procedure for bargaining to change the rules in the light of what we then wished to suggest to the carriers. There would be another crisis if we persist in the same way to the very end. . . ."

Similar views were expressed by counsel for the BRT in litigation involving the validity of an award by a special board of adjustment convened pursuant to the crew consist provisions of the Award by Arbitration Board No. 282.<sup>25</sup> Moreover, the BRT has served notices on carriers throughout the nation, purportedly pursuant to Section 6, which in substance propose a new agreement to restore discontinued

<sup>25</sup> *Brotherhood of Railway Trainmen v. Chicago, M., St. P. & Pac. R. Co.*, 237 F. Supp. 404 (D.D.C. 1964), remanded, 345 F. 2d 985 (D.C. Cir. 1965). The remarks in question were as follows:

"The carrier asserts here that the [reduction in crews proposed by the carrier in notices served pursuant to the crew consist provisions of Award 282] was also very important to the carrier because Award 282 had a two-year limit in which the procedures that were described in the award could be carried out by the carrier. But the difference is that the carrier had proposed a change in the rule which required a conductor and two brakemen and, if the change in the rule was granted by the Special Board of Adjustment, before the three-man crew could return, a new change in the rule would have to be made. And so that the time that . . . Award 282 was talking about in our view was the time in which to propose, negotiate, and litigate a proposed change in the rule, and was not the time limits in which the changed rule would be kept in effect.

"And this was made clear, I think on the opening day of the argument when I asked Mr. Shea [carrier counsel] if he was conceding that the award of Mr. O'Gallagher [neutral member of the special board of adjustment] expired by its own terms as of January, 1966, and he remarked on the record that he was here only to try this case, and was making no such concession.

"So that the two-year period that was made so much of both in the carrier's brief and in the argument here is not really a two-year period at all but, for the purposes of this case, the changed rule would be permanent unless and until it is changed through other processes if that is possible." (*Brotherhood of Railroad Trainmen v. Chicago, M., St. P. & Pac. R. Co.*, Civ. No. 1641-64, U.S. Dist. Ct., District of Columbia, Transcript of Proceedings, Sept. 9, 1964, pp. 17-18 (emphasis added).)

positions after the expiration of the Award. Such notices would hardly be necessary if the effect of expiration were to restore the pre-existing *status quo*, and accordingly are quite inconsistent with the view that the pre-existing rules somehow revive automatically.<sup>36</sup> Indeed, the BLF&E itself has so little faith in its claim concerning the pre-existing rules set forth in the notice described previously that it has also included in the notice demands similar to those made by the BRT.<sup>37</sup>

The purpose of the Congress, then, was to bring the original dispute to an end and to provide a point of departure for future collective bargaining. When it enacted the Joint Resolution, it intended to provide a serious solution for a serious problem, not an elaborate (and expensive) game at the end of which the parties would start all over again. The Congress' intent would be totally frustrated if the expiration of the Award resulted in restoration of the situation that existed in 1959 when the original notices were served, and if the carriers, in consequence, were required to hire men to fill the thousands of assignments that have been eliminated under the Award. Intentionally, the Congress has altered beyond restoration the *status quo* that existed when the original notices were served, and has established a new *status quo* that was expected to extend beyond the termination of the Award by Arbitration Board No. 282 even though subject to collective bargaining after such termination.

2. *State minimum crew laws have been superseded permanently.* The principles just stated plainly will govern the situation following expiration of the Award in states that do not have minimum crew laws. They do not in them-

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<sup>36</sup> See notice in Appendix III hereto.

<sup>37</sup> See Notice No. 2 in Appendix II hereto. Carrier representatives have taken the position that the BRT and BLF&E notices referred to in the text above are premature and invalid.

selves establish that the Congress intended to preempt such minimum crew laws; rather, such an intent by the Congress is demonstrated by other considerations discussed at pp. 25-38, *supra*. But the principles just stated do refute appellants' contention that preemption could not have been intended because of the "temporary" nature of the legislation and of the Award, and also refute the contention by appellants (in No. 71) that the state minimum crew laws will "revive" at the end of the two-year period of the Award even if preemption during the two-year period was intended and achieved.

As we have demonstrated, the Congress envisaged much more than a mere "temporary" change in the work rules in existence prior to the Award, after which such work rules would go back in effect and all would be as though the Joint Resolution had never been enacted. The Congress intended a "complete and final disposition" of the dispute growing out of the old work rules; the Congress intended the establishment of new work rules which would reflect and protect the justified interests of the carriers, of their employees and employee organizations, and of the public in the light of contemporary conditions including considerations of safety; and the Congress intended that the work rules thus established would govern the manning of trains not only during the two-year period of the Award, but also after the expiration of that two-year period until changed through normal collective bargaining in which the *status quo* to be considered is the work rules prescribed by the Award. Thereafter, the manning issue would be governed by collective bargaining agreements, not by minimum crew laws. In short, the Joint Resolution was intended to, and did, work a fundamental change in the previous situation both during the two-year period of the Award and thereafter.

Hence, the court below rightly concluded that "the

purpose and intent of Congress in enacting Public Law 88-108 would be frustrated by reinstatement of state crew consist laws upon the expiration of the awards . . . " (R. 273). Those laws have been preempted not just for two years, but permanently.

### CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

Respectfully submitted,

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RICHARD T. CONWAY  
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Railway Labor Conference,  
Amicus Curiae.*

SHEA & GARDNER  
734 Fifteenth Street, N.W.  
Washington, D.C. 20005  
*Of Counsel*

## **APPENDICES**

### **Appendix I**

#### **Members of National Railway Labor Conference\***

Akron & Barberton Belt R. Co.  
Akron, Canton & Youngstown R. R.  
Alton & Southern R. Co.  
Ann Arbor R. Co., The  
Atchison, Topeka & Santa Fe Ry. System, The  
Atlanta & West Point R. Co.  
Atlantic Coast Line R. R.  
Baltimore & Ohio R. Co., The  
Baltimore & Ohio Chicago Terminal R. R.  
Bangor & Aroostook R. Co.  
Belt Ry. Co. of Chicago, The  
Bessemer & Lake Erie R. Co.  
Birmingham Southern R. Co.  
Boston & Maine R.  
Brooklyn Eastern District Terminal  
Buffalo Creek R. R.  
Bush Terminal R. Co.  
Butte, Anaconda & Pacific Ry. Co.  
Camas Prairie R. Co.  
Canadian National Rys.  
Canadian Pacific Ry. Co.  
Central R. Co. of N. J., The  
Central Vermont Ry.  
Chesapeake & Ohio Ry. Co., The  
Chicago & Eastern Ill. R. Co.  
Chicago & Illinois Midland Ry. Co.  
Chicago & North Western Ry. Co.  
Chicago & Western Indiana R. Co.  
Chicago, Burlington & Quincy R. Co.  
Chicago Great Western Ry. Co.

\* Excluding wholly-owned subsidiaries of listed member carriers.

Chicago, Milwaukee, St. Paul & Pacific R. Co.  
Chicago Produce Terminal Co.  
Chicago, Rock Island & Pacific R. Co.  
Chicago Short Line Ry. Co.  
Chicago Union Station Co.  
Chicago, West Pullman & Southern R. Co.  
Cincinnati Union Terminal Co., The  
Clinchfield R. Co.  
Colorado & Southern Ry. Co., The  
Colorado & Wyoming Ry. Co.  
Columbus & Greenville Ry. Co.  
Davenport, Rock Island & North Western Ry. Co.  
Dayton Union Ry.  
Delaware & Hudson R. Corp.  
Denver & Rio Grande Western R. Co., The  
Denver Union Terminal Ry. Co., The  
Des Moines Union Ry. Co.  
Detroit & Mackinac Ry. Co.  
Detroit & Toledo Shore Line R. Co., The  
Detroit Terminal R. Co.  
Detroit, Toledo & Ironton R. Co.  
Duluth, Missabe & Iron Range Ry. Co.  
Duluth Union Depot & Transfer Co., The  
Duluth, Winnipeg & Pacific Ry.  
East St. Louis Junction R. R.  
Elgin, Joliet & Eastern Ry. Co.  
El Paso Union Passenger Depot Co.  
Erie Lackawanna R. Co.  
Fort Street Union Depot Co., The  
Ft. Worth & Denver Ry. Co.  
Ft. Worth Belt Ry. Co.  
Galveston, Houston & Henderson R. Co.  
Galveston Wharves  
Georgia R. R.  
Grand Trunk Western R. Co.  
Great Northern Ry. Co.  
Green Bay & Western R. Co.  
Gulf, Mobile & Ohio R. Co.  
Houston Belt & Terminal Ry. Co.  
Illinois Central R. Co.

Illinois Northern Ry.  
Illinois Terminal R. Co.  
Indianapolis Union Ry. Co.  
Jacksonville Terminal Co.  
Kansas City Southern Ry. Co., The  
Kansas City Terminal Ry. Co.  
Kentucky & Indiana Terminal R. R.  
Lake Erie, Franklin & Clarion R. Co.  
Lake Superior & Ishpeming R. Co.  
Lake Superior Terminal & Transfer Ry. Co.  
Lake Terminal R. Co., The  
Lehigh & Hudson River Ry. Co., The  
Lehigh Valley R. Co.  
Long Island R. Co., The  
Longview, Portland & Northern Ry. Co.  
Los Angeles Junction Ry.  
Louisville & Nashville R. Co.  
Maine Central R. Co.  
Manufacturers Ry. Co.  
McKeesport Connecting R. Co.  
Minneapolis, Northfield & Southern Ry.  
Minnesota & Manitoba Ry.  
Minnesota, Dakota & Western Ry. Co.  
Minnesota Transfer Ry., The  
Mississippi Central R. Co.  
Missouri-Kansas-Texas R. Co.  
Missouri Pacific R. Co.  
Monon R. R.  
Monongahela Connecting R. Co., The  
Monongahela Ry. Co., The  
Montour R. Co.  
Nevada Northern Ry. Co.  
Newburgh & So. Shore Ry. Co., The  
New Orleans Public Belt R. R.  
New Orleans Union Passenger Terminal  
New York Central System  
New York Dock Ry.  
New York, New Haven & Hartford R. Co., The  
New York, Susquehanna & Western R. Co.  
Norfolk & Portsmouth Belt R. Co.

& Western Ry. Co.  
Southern Ry. Co.  
mpton & Bath R. Co.  
i Pacific Ry. Co.  
stern Pacific R. Co.  
Union Ry. & Depot Co., The  
California & Eastern Ry. Co.  
vania R. R., The  
vania-Reading Seashores Lines  
Pekin Union Ry. Co.  
phia, Bethlehem & New England R. Co.  
t & Northern Ry. Co.  
gh & Shawmut R. Co., The  
gh & Ohio Valley Ry. Co.  
gh, Chartiers & Youghiogheny Ry. Co.  
uthority Trans-Hudson Corp.  
l Terminal Co.  
rminal R. R. Assn.  
    Company  
id, Fredericksburg & Potomac R. Co.  
erminal Ry. Co., The  
ph Terminal R. Co.  
s-San Francisco Ry. Co.  
s Southwestern Ry. Co.  
Union Depot Co.  
go & Arizona Eastern Ry. Co.  
d Air Line R. Co.  
ity Terminal Ry. Co.  
e R. Co.  
n Pacific Company  
n Ry. System  
maha Terminal Ry. Co.  
International R. Co.  
, Portland & Seattle Ry. Co.  
l Island Rapid Transit Ry. Co., The  
ee, Alabama & Georgia Ry. Co.  
ee Central Ry. Co.  
l R. R. Association of St. Louis  
l Railway, Alabama State Docks  
na Union Station Trust

Texas and Pacific Ry. Co., The  
Texas Mexican Ry. Co., The  
Texas Pacific-Missouri Pacific Terminal R. R. of New  
Orleans  
Toledo, Peoria & Western R. Co.  
Toledo Terminal R. Co.  
Union Depot Co. (Columbus, Ohio)  
Union Pacific R. R.  
Union R. Co. (Pittsburgh)  
Union Ry. Co. (Memphis)  
Union Terminal (Dallas)  
Upper Merion & Plymouth R. Co.  
Washington Terminal Co., The  
Western Maryland Ry. Co.  
Western Pacific R. Co.  
Wichita Terminal Assn.  
Wichita Union Terminal Ry. Co., The  
Winston-Salem Southbound Ry. Co.  
Youngstown & Northern R. R.

**Appendix II****1965 BLF&E Notice of Proposed Changes in Rules\***

NOTICE NO. 1  
NOVEMBER —, 1965

[Name of Railroad Official]

[Title]

[Name of Railroad]

Dear Sir:

In accordance with the provisions of the Railway Labor Act and the agreement or agreements now in effect on the [name of carrier], please accept this as formal notice of our desire to change the collectively bargained agreement governing the employment of firemen (helpers) on other than steam power to the extent provided in Attachment "A", attached to and made a part hereof, such change to become effective at 12:01 a.m., March 31, 1966.

This proposal is made to you, notwithstanding the fact that upon the expiration of the Award of Arbitration Board 282, the collectively bargained agreement with respect to employment of firemen (helpers) will be in full force and effect. We shall expect that on and after 12:01 a.m., March 31, 1966, you will comply fully with the collectively bargained agreement with respect to employment of firemen (helpers) on this property, unless another agreement has been reached in the meantime.

Please advise pursuant to Section 6 of the Railway Labor Act the time, date and place where conference may be held to discuss this notice.

Very truly yours,

[Name]

General Chairman,  
Brotherhood of Locomotive  
Firemen and Enginemen

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\* Served on carrier parties to Award 282 on or about November 15, 1965.

NOTICE NO. 1  
NOVEMBER —, 1965  
ATTACHMENT "A"

*Section A:*

1. Firemen (helpers) taken from the seniority ranks of the firemen shall be used on all locomotives in road and yard service, except as specifically provided in Section B.

*Section B:*

1. DAYLIGHT YARD JOBS, other than those:

- (a) Engaged in switching passenger cars and equipment, or
- (b) Engaged in belt line, transfer, interchange or industrial work, or
- (c) Which are consistently on duty more than eight (8) hours, or
- (d) Whose operations are not confined to an area from which other engines operated without firemen (helpers) are excluded during the period the job works, or
- (e) On which there is need for an employee on the locomotive to relay signals or perform lookout functions by reason of such conditions as curvatures of tracks, overhead or other obstructions, close clearances, unprotected crossings, dangers arising out of mainline movements, hazard to the public or railroad employees, or imposition of onerous working conditions on the engine or train crew.

2. DAYLIGHT BRANCH LINE JOBS, other than those where:

- (a) The number of units in the locomotive consist exceeds one, or
- (b) The total time on duty may be expected to exceed eight (8) hours,
- (c) The total miles run exceeds one hundred (100), or
- (d) The maximum speed on branch line exceeds thirty (30) miles per hour.

- (e) The maximum number of cars in the train may be expected to exceed thirty-five (35), or
- (f) The continuous movement of the train or engines exceeds two (2) hours without relief, or
- (g) Onerous working conditions would be imposed on the members of the engine or train crew if a fireman was not used.

*Section C:*

1. Notwithstanding the provisions of Section B, a job may be operated without a fireman (helper) only when it becomes necessary to hire a fireman (helper).

2. A junior fireman (helper) may be required to protect jobs in Section B if same is necessary to avoid a new hire.

*Section D:*

1. The carrier shall hire and place on the firemen's seniority roster sufficient firemen (helpers) to comply with the provisions of this agreement.

NOTICE NO. 2  
NOVEMBER —, 1965

[Name of Railroad Official]

[Title]

[Name of Railroad]

Dear Sir:

In accordance with the provisions of the Railway Labor Act and the agreement or agreements now in effect on the [name of carrier], please accept this as formal notice of our desire to negotiate an agreement incorporating the provisions of Attachment "A", attached to and made a part hereof, such agreement to become effective at 12:01 a.m. March 31, 1966.

Please advise pursuant to Section 6 of the Railway Labor Act the time, date and place where conference may be held to discuss this notice.

Very truly yours,

[Name]  
General Chairman,  
Brotherhood of Locomotive  
Firemen and Enginemen

NOTICE NO. 2  
NOVEMBER —, 1966  
ATTACHMENT "A"

**SECTION A.**

Employees whose employment and seniority were terminated by the application or misapplication of the Award of Arbitration Board 282 will, on March 31, 1966, be recalled and restored to the seniority roster and employed with their original seniority date and used as firemen (helpers) in accordance with the agreement in effect on March 31, 1966. Employees restored to the seniority roster will be considered to have continuous service in the application of the vacation and other agreements. The railroad will, on or before March 31, 1966, by registered letter notify firemen (helpers) whose employment has been terminated by the railroad's application of the Award of Arbitration Board 282 at their last known address of the restoration of the individual's seniority. Failure of the individual to report for service within thirty (30) days of receipt of the registered letter will be considered to be a forfeiture of all seniority rights.

**SECTION B.**

Individuals restored to the seniority roster in the application of Section A hereof shall be reimbursed for any monetary loss sustained as result of improper termination.

**SECTION C.**

Employees who have been deprived of rights, during the term of the Award of Arbitration Board 282, to exercise their seniority in accordance with applicable schedule provisions in effect on January 24, 1964, will be reimbursed for all monetary losses sustained as a result of deprivation of such seniority rights.

**SECTION D.**

Employees who, as a result of the carrier's application of the Award of Arbitration Board 282, have incurred expenses such as, but not limited to, travel, lodging and meals

in being required by the carrier to man assignments operating out of other than the point where their residence is maintained shall be reimbursed for such expenses.

SECTION E.

Employees who have experienced monetary loss as result of sale of their homes by reason of the carrier requiring such employees to man assignments at points other than where their original residence was maintained will be reimbursed for the loss incurred. Additionally, such employees will be reimbursed for moving expenses.

SECTION F.

Employees changing their point of residence as result of the carrier requiring such employees in the application of the Award of Arbitration Board 282 to man assignments out of points other than where original residence was maintained will be reimbursed for moving expenses.

NOTICE NO. 3  
NOVEMBER —, 1965

[Contents Omitted.]

**Appendix III****1965 BRT Notice of Proposed Changes in Rules\***

**REGISTERED  
RETURN RECEIPT REQUESTED**

**BROTHERHOOD OF RAILROAD TRAINMEN  
General Grievance Committee  
Missouri Pacific System  
320 Buder Building  
St. Louis Missouri**

**June 30, 1965**

**Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company  
Missouri Pacific Building  
St. Louis, Missouri 63103**

**Dear Sir:**

The undersigned, representative of the Brakemen of the Missouri Pacific Railroad Company, under existing agreements between management and the Brotherhood of Railroad Trainmen, has been authorized, under the laws and rules of procedure of the Organization, to submit to you notice of desire to change, effective January 26th, 1966, the said agreements as set forth below:

Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen, which will provide that crews in passenger service, through and irregular freight service, helper service, work service and traveling switch engines, shall consist of not less than two (2) brakemen (trainmen).

Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen which will provide that local freight and mixed

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\* Similar notices were served on various carrier parties to Award 282 at different times during the summer of 1965.

train service crews shall consist of not less than three (3) brakemen (trainmen).

Therefore, in accordance with the provisions of the Railway Labor Act, as amended, and current agreements covering rates of pay, rules and working conditions of the employees herein covered, you will please accept this as formal notice of our desire to change the said agreements as set forth above.

Please reply to this proposal in writing to the undersigned General Chairman within ten days, fixing date within the provisions of the Railway Labor Act when conference with you may be had for the purpose of discussing these matters.

It is the request that all lines or divisions of railway operated by the Missouri Pacific Railroad shall be included in settlement of these matters, and that any agreement reached shall apply alike to all such lines of railway.

Very truly yours,

A. F. SMITH  
General Chairman, B. of R. T.

AFS/h

cc: C. Luna, President, BRT

**Appendix IV****Crew Consist Agreement of January 29, 1965\***

New York, N. Y.  
January 29, 1965

**Mr. Charles Luna, President  
Brotherhood of Railroad Trainmen  
Standard Building  
1370 Ontario Street  
Cleveland, Ohio 44113**

Dear Mr. Luna:

This refers to our recent discussions with you concerning crew consist in states comprising the eastern territory and particularly the necessity, in the interest of the railroads, their employees and the public, for repeal of the so-called full crew laws.

During our discussion you indicated there was an area subject to agreement that would provide protection for the employees you represent and thereby eliminate your opposition to repeal of existing full crew laws. In line with this discussion and on behalf of the eastern railroads that are shown on the attached sheet designated as Attachment "A", we offer the following:

1. On all railroads, parties to this Agreement, the provisions of the Award of Arbitration Board 282 will continue to be applicable, including decisions of special

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\* The following railroads (excluding subsidiaries of listed railroads) had signed the January 29, 1965 crew consist agreement with the BRT as of November 4, 1965: Ann Arbor R. Co.; Baltimore & Ohio R. Co.; Bessemer & Lake Erie R. Co.; Canadian National Rys.; Central Vermont Ry.; Delaware & Hudson R. Corp.; Detroit, Toledo & Ironton R. Co.; Erie-Lackawanna R. Co.; Grand Trunk Western R. Co.; Lehigh & Hudson River R. Co.; Lehigh Valley R. Co.; Long Island R.R.; Monon R. Co.; Montour R. Co.; New York Central System; New York, New Haven & Hartford R. Co.; New York, Susquehanna & Western R. Co.; Pennsylvania R. Co.; Pennsylvania-Reading Seashore Lines; Pittsburgh, Chartiers & Youghiogheny R. Co.; Youngstown & Southern R. Co.

boards of adjustments and agreements between the parties arising under the Award's provisions, until the specified termination date of the Award (January 25, 1966), except in states having so-called full crew laws in effect the ground road and yard crew consist provisions of which may be repealed prior to the January 25, 1966 termination date. In the event the ground road and yard crew consist provisions of the full crew law is repealed in one or more of the states presently having such laws, in which one or more of the carriers, parties to this Agreement operate, the provisions of this Agreement shall become effective in that State coincident with such repeal or on and after January 25, 1966, whichever date is earlier.

2. On and after January 25, 1966 (or on and after the earlier effective date in a particular state resulting from the repeal of the ground road and yard crew consist portion of the full crew laws in such states having such laws), a rule shall be inserted in the respective agreements between the parties to this Agreement applying to ground road and yard service employees which will provide for a crew consist on all ground road and yard crews in all classes of road and yard service of not less than a conductor (foreman) and two (2) trainmen (helpers), including assistant conductors, ticket collectors, baggagemen, brakemen and flagmen; provided, however, that on railroads which had established crew arrangements prior to January 25, 1964, which permitted crews to be operated with less than two (2) trainmen (helpers), such crew arrangements shall remain in effect subject to change in accordance with the provisions of paragraph 6 hereof. The aforementioned crew consist rule shall not apply to self-propelled devices, light engine, helper and exchange engine movements, which shall be manned in accordance with existing agreements in effect with the organization signatory hereto.

3. In any case in which the carrier has called or filled a crew in accordance with the foregoing paragraph and the consist of such crew falls below the prescribed minimum by reason of the failure of a crew member to report, or by being separated from the crew after reporting, such crew will function in accordance with existing rules.
4. The carriers shall have the right to discontinue the use of trainmen in excess of minimum crew consist established by paragraph 2, except that the carriers will comply with the provisions of agreements or full crew laws in effect on the date of this Agreement with respect to the employment of trainmen in excess of the minimum crew consist provided by paragraph 2 so long as it is necessary to do so in order to provide employment for trainmen with seniority dates prior to January 25, 1964, who were not in a furlough status on that date and for whom no other employment in train service on their seniority district is available at his governing terminal (home or away from home as the case may be).
5. Upon acceptance of this Agreement the Brotherhood of Railroad Trainmen will immediately withdraw all opposition to repeal of existing statutory and regulatory minimum crew requirements and from participation in any litigation concerning the legality of such requirements in the states covered by this Agreement. Further, the Brotherhood will not institute or support the adoption of any new minimum crew consist laws or regulations in the states covered by this Agreement while this Agreement is in effect.
6. This Agreement will continue in effect until January 1, 1970, and thereafter until changed in accordance with the provisions of the Railway Labor Act, as amended.

If you are in accord with the foregoing, please indicate your acceptance by affixing your signature in the space provided below.

Very truly yours,

s/ A. E. PERLMAN,  
President,  
New York Central Railroad

s/ STUART T. SAUNDERS,  
Chairman of the Board,  
Pennsylvania Railroad

s/ Wm. WHITE,  
Chairman,  
Erie-Lackawanna Railroad

Accepted:

s/ CHARLES LUNA  
President,  
Brotherhood of Railroad Trainmen

**ATTACHMENT "A"**

[List of original carrier parties, omitted.]

(Applies to all states in which the above railroads operate in the United States.)

(6861-9)